

VIVEKA CHEN & ASSOCIATES

viveka@igc.org

819 Hampshire St.
San Francisco, CA 94110
415-282-5918
415-269-2701 (cell)

PORT OF OAKLAND

**MARITIME
STAKEHOLDER
GROUP
OUTREACH REPORT**

October 9, 2009

MARITIME STAKEHOLDER GROUP OUTREACH REPORT

TABLE OF CONTENTS

A. Executive Summary	2
B. Outreach Process Background	5
C. Summary of Findings	6
1. Observations on overarching themes	6
2. Conditions necessary for meaningful engagement: Common themes across stakeholder groups (chart)	8
3. Specific themes emerging within each stakeholder group:	12
a. Process concerns	
b. Substantive issues of concern	
c. Engagement requests	
D. Recommendations and Next Steps	16

APPENDICES

All documents in the appendices were included in the original invitation to participate in the outreach process.

1. Letter of invitation to stakeholders to participate in outreach
2. Letter inviting participation in outreach survey
3. Port of Oakland stakeholder groups visual diagram
4. Participant list
5. Consultant bio

A. EXECUTIVE SUMMARY

The Port of Oakland is seeking to design a forum that can serve as the focal point for continued public engagement in Port Maritime projects. The main intent of the forum being proposed by the Port is to provide an on-going process for monitoring of and input on the Maritime Air Quality Improvement Plan (MAQIP) and the Comprehensive Truck Management Program (CTMP), as well as Port seaport projects.

In early June 2009, the Port invited approximately 75 stakeholders to provide input on the design of a Maritime Stakeholder Group (MSG). Background and parameters were shared in the invitation letter included in the appendices.

The consultant, Viveka Chen & Associates, conducted the outreach process, which resulted in nearly 70 individuals providing information through surveys and focus groups in June and July. This report shares the key findings and consultant recommendations and is being shared with the public.

KEY FINDINGS

The results of the outreach provide a clear outline of the basic requirements and context for meaningful stakeholder engagement.

- Stakeholders seek to share and have access to **information** relevant to key issues, as well as the opportunity to stretch assumptions based on reliable, up-to-date factual information that may come from sources outside the Port.
- Stakeholders are looking to participate with the Port and each other in **joint problem solving** on select priority issues of convergence or divergence that require multiple parties for successful resolution.
- Stakeholders want **decision making and priority setting** to be influenced by their input. They require transparency to understand the reasoning when recommendations are not adopted. They specify that the Commissioners should hear reports and recommendations directly from the stakeholders themselves.
- Stakeholders want decisions made in relation to an **overall strategic vision, plans and measurable goals** in order to partner with the Port with a focus on achieving and monitoring results.
- The Port's **trust and the courage to listen and act** based on input coming from stakeholders are seen as crucial supports to meaningful engagement, requiring **strong leadership** to guide a shift in the prevalent organizational culture.

There is now an opportunity to meaningfully engage a wide range of stakeholders. The high level of participation in the outreach effort indicates interest in the proposed MSG and a willingness to shape it as a forum and participate in its success. The range of experience and expertise within and across groups is impressive and represents a considerable amount of social capital for the Port to access so it can succeed in terms of the triple bottom line of economics, the environment and social responsibility. Many of the problems the Port faces require multiple sectors to work together on solutions. Stakeholders expressed appreciation for the exchange of perspectives and ideas that took place in the focus groups. In several instances they have already taken initiative to create venues for cooperation amongst themselves and to reach out to nontraditional partners. A common refrain was a desire to see the Port thrive as an important regional economic engine.

However, stakeholders consistently reported a high degree of dissatisfaction and frustration with previous efforts to work collaboratively with the Port. Participants were very clear in describing conditions for success and clarifying what has not worked in the past. Some previous active MAQIP and CTMP participants declined to participate in further Port stakeholder advisory processes. A strong theme is that continued participation is dependent on Port leadership taking a strong stance to affirm the benefit of stakeholder engagement and acting to shift an organizational tendency toward insularity. Stakeholders are adamant that their input must yield results. There is a risk that if the Port doesn't improve collaboration, stakeholders may feel they have no choice but to pursue alternative and possibly more adversarial means to address their interests. A repeated message was that the Port is missing the opportunity to align its stakeholders as a team pulling together for shared goals and success.

The economic downturn has changed the Port's operating context considerably, and many see the Port gradually losing its competitiveness, potentially to the point where it can't bounce back when the projected economic upswing arrives. Stakeholders describe the Port as retrenching rather than exhibiting strong leadership at a time when it is needed more than ever. There is considerable pressure for the Port to aggressively market itself and retain and attract business and jobs and to make policy decisions to specify how environmental compliance will be achieved. At the same time, stakeholders are eager to seize the window of time the economic downturn provides as an unusual opportunity to improve efficiency and introduce greener technology to prepare for an increase in throughput when the economy shifts.

This Report includes the following findings:

1. Observations on overarching themes
2. Conditions necessary for meaningful engagement:
Common themes across stakeholder groups (chart)
3. Specific themes emerging within each stakeholder group:
 - a. Process concerns
 - b. Substantive issues of concern
 - c. Engagement requests

RECOMMENDATIONS AND NEXT STEPS

1. Make a clear leadership statement about formation of a Maritime Stakeholder Group.

Stakeholders are looking for a cue from the Port as to whether the MSG being launched will incorporate lessons learned from previous processes and this outreach project, and ultimately whether participation will be worthwhile and in their best interest.

To move forward, the Port could usefully send out a refined MSG description based on consideration of stakeholder input. It would be ideal to send a clear signal back to participating stakeholders without delay. This may require working through appropriate Board committees to agendize a Board policy guidance action item on the formation of an MSG.

2. Design operating guidelines for the MSG and first year's activities.

After Port leadership provides policy guidance on the parameters for an MSG and any other stakeholder groups to be formed in response to outreach feedback, the Port can work with the outreach consultant to draft specific operating guidelines for the formation of the stakeholder group(s) and the first year of activities. The design would follow the Commission's policy

guidance and draw from stakeholder input. Many of the process tools used in the MAQIP process can inform the design of the MSG, with important improvements put in place in response to feedback on lessons learned.

Proposed operating guidelines should be reviewed by the MSG, and any other groups formed, at their initial meeting(s) to ensure that conditions for success are in place.

3. *Convene a meeting of stakeholders in Fall 2009.*

Some months have passed since the last MAQIP and CTMP stakeholder meetings. However, it may take the remainder of 2009 to finish designing and implementing procedures for officially forming a newly constituted MSG that meaningfully takes into consideration the outreach feedback. For example, the member selection process is likely to take some time.

In the meantime, the Port should look for options to convene a Fall 2009 meeting to fill the gap between the old and new advisory processes and facilitate monitoring of and input on the MAQIP and CTMP, as well as Port seaport projects impacting land use.¹ Stakeholders have listed issues of concern to tackle during the first 6-12 months of the proposed MSG, and this information could be used to shape agenda design. The outreach invitation list would be a good starting point for participants to invite to such a “bridging” meeting.

The consultant recommended that the Port consider how the October 5, 2009 *State of the Port* meeting could help to fulfill this bridging function. The Port did decide to expand the invitation list for the 2009 event to include outreach participants. Another option is the Mayor’s Port Task Force suggestion to hold a town hall meeting to hear from all stakeholders before the end of 2009.

4. *Identify opportunities for taking more immediate action.*

It would be useful for the Port to identify and respond to issues surfacing in the outreach process that extend beyond the scoping and design of an MSG. There are many potential “win-win” actions that would both: 1) demonstrate the Port’s willingness to listen to and act on input gathered through this process, which will help improve stakeholder relations, and 2) achieve real results in priority areas for improving Maritime operations.

This is also a good time for Port staff to revisit early actions for implementation prioritized during the later stages of the MAQIP and CTMP stakeholder processes to determine whether they have been accomplished or not and what follow-through may need attention. Brief updates from the staff responsible for implementation could be shared with the former members of those groups by e-mail.

¹ Stakeholders consistently named progress on land use as a priority for any MSG. The current issue of Oakland Army Base development is of special interest as a time sensitive opportunity to achieve economic, environmental and public health goals.

B. OUTREACH PROCESS BACKGROUND

The Port of Oakland contracted with the consultant, Viveka Chen & Associates, to run an outreach process to inform design of a Maritime Stakeholder Group (MSG).

On June 4, 2009 the Port of Oakland sent a letter to approximately 75 stakeholders requesting their participation in the outreach effort. The invitation letter and related outreach process documents are included in the appendices and provide important context for this report.

The stakeholders were invited to complete a survey and to participate in focus groups facilitated by the consultant without Port staff present. In late June and early July eight focus groups met to provide their input on design of an MSG. The following focus groups were organized to maximize participation based on scheduling constraints:

1. Impacted Residents (Oakland and Corridor Communities)
2. Industry – Tenants and Terminal Operators
3. Industry – Trade and Logistics
4. Labor and Workforce Development
5. Maritime Air Quality Improvement Plan (MAQIP) Interagency Group and Other Agencies
6. Mayor's Port Task Force
7. Nongovernmental, Environmental and Community Based Organizations
8. Small Local and Regional Trade Associations

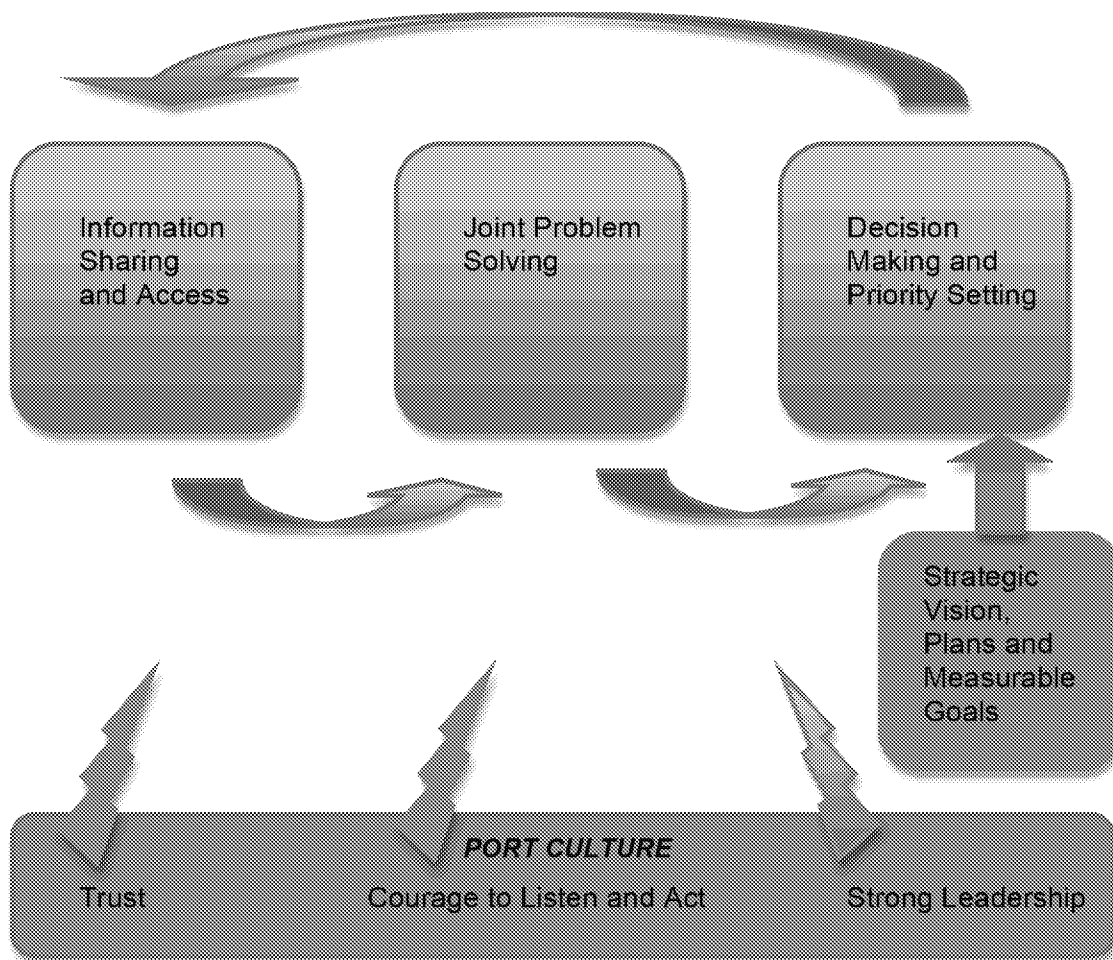
Nearly 70 individuals provided information through surveys and focus groups and a list of participants is provided in the appendices. This report shares the key findings and consultant recommendations and is being shared with the public.

C. SUMMARY OF FINDINGS

1. OBSERVATIONS ON OVERARCHING THEMES

The results of the outreach provide a clear outline of the basic requirements and context for meaningful stakeholder engagement. The diagram on page 6 visually captures this information.

- Stakeholders seek to share and have access to **information** relevant to key issues, as well as the opportunity to stretch assumptions based on reliable, up-to-date factual information that may come from sources outside the Port.
- Stakeholders are looking to participate with the Port and each other in **joint problem solving** on select priority issues of convergence or divergence that require multiple parties for successful resolution.
- Stakeholders want **decision making and priority setting** to be influenced by their input. They require transparency to understand the reasoning when recommendations are not adopted. They specify that the Commissioners should hear reports and recommendations directly from the stakeholders themselves.
- Stakeholders want decisions made in relation to an **overall strategic vision, plans and measurable goals** in order to partner with the Port with a focus on achieving and monitoring results.
- The Port's **trust and the courage to listen and act** based on input coming from stakeholders are seen as crucial supports to meaningful engagement, requiring **strong leadership** to guide a shift in the prevalent organizational culture.



This process also brought to light a number of opportunities and challenges for the Port as it works to develop partnerships with its stakeholders.

Opportunities for successful stakeholder engagement:

- There was a high level of participation in the outreach effort. Individuals made time to provide valuable feedback through the surveys and in-person focus groups. Stakeholders were cautiously willing to explore the possibility of a meaningful maritime stakeholder engagement process.
- Stakeholders want to work collaboratively with the Port to see it succeed economically, environmentally and socially. The Port is seen as an important asset in Oakland and regionally, and many are concerned to see it thrive into the future.
- Stakeholders are willing to bring considerable expertise, time and resources to the table if they can be assured that their participation will bring results.
- A meaningful stakeholder process moving forward could prevent some stakeholders from resorting to more adversarial and potentially costly tactics to achieve change.
- The outreach process has surfaced information that can guide the Port in meaningfully and constructively engaging stakeholders on key issues. There were many ideas shared for making progress, which the Port could take a leadership role in moving forward.
- There is still energy to work collaboratively for successful implementation of the MAQIP and the CTMP in order to reach the overall risk reduction goals.
- The economic downturn provides an unusual opportunity for stakeholders to improve efficiency and introduce greener technology to prepare for an increase in throughput when the economy shifts, as it is eventually predicted to do.
- Stakeholders have interest in chartering a standing MSG, as well as working in more flexible, ad-hoc meetings that can efficiently add value on specific issues.

Challenges to successful stakeholder engagement:

- Port Commission and executive leadership are under scrutiny and frequently described as lacking an organizational commitment to working effectively with stakeholders to ensure the Port's continued success. The Port is described as retrenching.
- The economic downturn has significantly changed the Port's operating context, and many see the Port as lacking direction and steadily losing competitiveness. There is considerable pressure for the Port to aggressively market itself and retain and attract business and jobs and to make policy decisions to specify how environmental compliance will be achieved.
- The Port is operating with multiple identities and performance expectations: as a business, a public agency and increasingly an environmental regulator.
- Stakeholders commonly expressed a high degree of frustration with the Port's past treatment of stakeholders and their input, as well as with the Port's follow-through on substantive issues of concern.
- Stakeholders are testing what further engagement they are willing to have with Port-run stakeholder processes and considering other strategies for achieving the change they seek. Alternative strategies could include more adversarial tactics that could be costly to the Port and its reputation. Some stakeholders have already stopped participating.
- Many of the problems the Port faces require multiple parties to work together on solutions. Continued loss of confidence and decreasing participation in joint problem-solving could result in inefficiencies. Beneficial cargo owners, shippers and railroads are considered significant invisible stakeholders who have not participated in collaboration.
- Stakeholders are interested in working with the Port at a variety of levels and on diverse issues. A single stakeholder advisory group forum may not suffice although it is attractive to the Port as an efficient solution for maintaining stakeholder relations.

2. COMMON THEMES REPORTED ACROSS STAKEHOLDER GROUPS REGARDING CONDITIONS NECESSARY FOR MEANINGFUL ENGAGEMENT

<i>Going Forward: Key Conditions for Meaningful Stakeholder Engagement</i>	<i>Looking Back: Past Conditions that Inhibited Meaningful Stakeholder Engagement</i>
STRONG LEADERSHIP	
Top leadership believes benefit is gained by engaging stakeholders on matters of substance. The Commission establishes stakeholder engagement as a matter of policy and owns the process.	No ownership of stakeholder involvement by Commissioners or executive level staff and consequently no accountability to stakeholders. The Commission is unaware of the substance of the stakeholder group's work and recommendations.
All Port divisions are on board with engaging stakeholders. The Maritime Division prioritizes an MSG as a core part of its operations structure and practices.	Stakeholder process is seen as the domain of the Social Responsibility division. Other divisions do not own the group, process or its resulting input.
Staff are directed by leadership to engage stakeholders and know they have leadership's backing to respond to stakeholder input.	Executive level consistently delegates stakeholder engagement to lower level staff. Lack of leadership directing staff to find solutions to disagreements between parties.
Stakeholders have access to executive staff and Commissioners.	Executive leadership is absent from the process or inaccessible. Stakeholders are left with only two minutes of public comment time at Commission meetings to convey their input.
COLLABORATIVE INSTITUTIONAL CULTURE	
A Port organizational culture that genuinely values the benefits of stakeholder input.	Port not open to developing new ideas and tends to solve problems behind closed doors without drawing on outside thinking.
A culture that seeks innovation and collaboration with stakeholders to find better solutions that can meet multiple needs.	Expertise of stakeholders not sought out or valued. Opportunities for increased and coordinated support for a thriving Port are missed.
Institution has the willingness and courage to listen and be challenged to move beyond current standard practices and comfort zone.	Port conveys a resistance to or fear of what they might hear or be asked to do. Port understands how to get things done, but is not open to other possible routes towards a solution. Stakeholder group is largely a venue to promote what the Port is already doing.

Stakeholders willing to compromise.	<p>Stakeholder process for soliciting input is largely perceived as a facade.</p> <p>Stakeholders unwilling to compromise.</p>
SUBSTANTIVE COMMUNICATION	
<p>A regular flow of up-to-date information relevant to stakeholder concerns.</p> <p>Stakeholders have venue(s) for giving input on impacts, what's working or not, and possible solutions. Ability for stakeholders to request information in advance, raise and get matters of concern addressed.</p> <p>Policy setting done with substance of deliberations shared transparently.</p> <p>Constraints set by Port openly shared along with a willingness and energy to find solutions. Honest disclosure of parameters.</p> <p>Substantive discussion. Real dialogue with the stakeholders.</p> <p>Collaborative problem-solving across stakeholder groups. Working sessions with staff responsible for implementation.</p> <p>Joint problem solving focusing on issues that require multiple stakeholder/sector participation for success.</p> <p>Allowance for exploration of reasonable disagreement over facts and claims used to craft policy decisions. Stakeholders able to share alternative information and analysis to shape policy.</p>	<p>Lack of consistent, timely information from the Port on key concerns identified by stakeholders.</p> <p>One-way information sharing from the Port without opportunity for stakeholders to give feedback or solicit information.</p> <p>Policy setting not aired publicly. Inconsistency between public messages and private dealings.</p> <p>Port does not frankly state constraints, which results in participants believing follow-through is being undertaken or that an area was up for discussion when it was not.</p> <p>Port considers constraints non-negotiable, when feasible alternatives merit consideration.</p> <p>Stakeholders used as a sounding board, without opportunities to work with staff on implementation.</p> <p>Decisions made by Port without consideration of all factual information and input from those stakeholders most impacted.</p> <p>Solutions crafted with insufficient influence from those most impacted. No room for finding more effective alternatives to meet the same goals.</p> <p>A perceived "take it or leave it" message regarding decisions and policy directions.</p>

Sharing and using up-to-date information. All participants have timely access to information relevant to agenda topics.	<p>No forum to meaningfully influence policy setting other than very brief public comments at Board meetings.</p> <p>Information circulated last minute with an expectation that participants respond immediately.</p>
ACCOUNTABILITY TO INPUT PROVIDED	
<p>Clear protocol on how Port will make use of stakeholder input and how an MSG can track follow-up.</p> <p>Ability to impact policy. Recommendations taken seriously (with understanding that every suggestion made cannot be feasibly adopted).</p> <p>Commissioners receive objective reports of stakeholder input (staff are not intermediaries) to accommodate full diversity of group opinion. Commission considers the input and takes steps to implement recommendations.</p> <p>Up-to-date monitoring and reporting of progress on agreed actions and plans.</p> <p>Frank, honest communication when an action cannot be taken, with information shared on what happened and why.</p>	<p>No requirement for Port staff to integrate input into final plans/products. Staff appears to be listening, but plans/products/decisions reflect very little stakeholder input.</p> <p>Stakeholders asked to go along with decisions already made by others.</p> <p>Staff act unilaterally to accept or reject input without conveying alternative stakeholder point of view to Commission. Lack of communication on why input is not incorporated.</p> <p>Promises not kept (inconsistency of staffing, agreements forgotten, rules and policies without teeth, no monitoring).</p>
RESULTS ORIENTATION	
<p>Realistic, practical plans developed, with goals and timelines that can be measured and monitored.</p> <p>Visible, timely results on attainable goals. Action-oriented focus on specific projects.</p>	<p>Considerable time spent on process, yet end results do not reflect the input or effort.</p> <p>Plans adopted without measurable goals or timelines.</p> <p>Commission decisions delayed.</p> <p>Port slow to implement.</p>
EQUAL PARTICIPATION OF FULL RANGE OF STAKEHOLDERS	
Efforts made to engage the true and diverse breadth of stakeholders. All parties critical to solving an issue are brought to the same table.	Important stakeholders are not at the table. In some cases they have not been invited, in others, powerful interests do not participate (shippers, beneficial cargo owners, railroads are seen as the invisible stakeholders).

<p>Opportunities are created for all stakeholders to learn about each others' concerns and points of view, so they can better collaborate to find mutually benefiting solutions.</p> <p>Transparent, fair, process that puts all interests on equal footing.</p>	<p>Stakeholders lack information on and understanding of each others' points of view, experience and expertise.</p> <p>Adversarial relations between stakeholders and with Port.</p> <p>Specific stakeholders and points of view have disproportionate representation or have taken over discussions.</p> <p>Special interest groups have undue influence outside of the public dialogue and stakeholder processes.</p> <p>Specific interest group(s) treated as low priority by the Port.²</p> <p>Changes cannot be made because relevant stakeholders are not present.</p>
GOOD GROUP PROCESS	
<p>Clear and consistent structure, process, participation, and follow-through. Agreement by participants that group is correctly chartered.</p> <p>Port leadership formally supports the process and makes sure it stays on track. Financial commitment from Port to fund stakeholder process.</p> <p>Process steered by stakeholder co-chairs who have control over the agenda. Clear agendas and action items with advance information.</p> <p>Strong, neutral facilitation.</p> <p>Consistent participation.</p>	<p>Unstructured and reactive ways of engaging stakeholders. False starts, repeating and losing previous work. Unclear parameters. Frequent staff changes result in changes to the process and products.</p> <p>Commissioners and executive level staff have not set a sufficiently clear leadership priority on stakeholder involvement, and consequently there is no accountability.</p> <p>Community unable to get topics on the agenda. Agenda set by staff. Process is staff-driven.</p> <p>Ineffectual meeting process. Some voices unfairly dominating.</p> <p>Inconsistent participation by stakeholders.</p>

² Every one of the focus groups expressed the opinion that their interests and perspectives were undervalued in comparison to the Port's consideration of other special interest groups.

3. SPECIFIC THEMES EMERGING WITHIN EACH STAKEHOLDER GROUP

Process Themes Emerging within Each Stakeholder Group

Impacted Residents (Oakland and Corridor Communities)

- Don't want those who stand to make a profit to make decisions on behalf of the community.
- Don't want others speaking on community's behalf (past technical consultants have presented inaccurate data regarding conditions in the community).
- The now defunded Good Neighbor Breakfasts were popular with impacted residents. It was valuable for residents from different communities to meet together, receive updates, give feedback and have access to senior staff and Commissioners.
- Current system treats residents as lacking the expertise necessary to make a useful contribution.

Industry – Tenants and Terminal Operators

- Board meetings and hearings are geared toward political theater. Want a decision-making process and forum that is substance- and fact-based, rather than caught up in politics.
- Want a forum to educate other stakeholders on industry's point of view and to work together on the most cost-effective solutions for community and environmental priorities and goals.
- Worried that a maritime stakeholder advisory group could be used by the Commission as political cover and a justification for delayed decision-making. A reputation for a contentious stakeholder process can further discourage businesses from working with the Port of Oakland.

Industry – Trade and Logistics

- Truckers are not included at the table and their opinion is not valued.
- Social issues have overshadowed and overwhelmed practical business issues, presenting Oakland as unfriendly to business.

Labor and Workforce Development

- Port needs to show it is serious about creating job opportunities and partnering with industry, labor and education. Training has taken a backseat due to leadership change and turnover at the Port, as well as the economic downturn.
- This sector has significant resources to bring and could leverage more with increased partnership with the Port and its tenants.

MAQIP Interagency Group and Other Agencies

- Agencies already have access to the Port. More important is having a public forum to effectively address community concerns. Resident perspectives and their concerns help the agencies operate.
- Don't want to participate in a process where the Port appears to be engaging stakeholders, when in reality the engagement is not meaningful.
- If Port doesn't really want to collaborate, then should go back to a more structured, traditional agency review and comment workshop format.
- Impacted community needs technical and legal support to fully participate.

Mayor's Port Task Force

- The current City-Port Liaison Committee is not living up to its promise to set policy. Therefore the Task Force strongly supports the City and Port of Oakland jointly creating the

new MSG. The City-Port Liaison Committee could potentially still meet to resolve conflicts where their interests and obligations overlap.

- An MSG should report to the Commission directly (not through staff) and be the responsibility of and led by the Maritime Division.
- Establish an MSG with mandated authority through policy passed by the Commissioners (not through an administrative decision, which could later be reversed).
- MSG Co-Chairs should set the agenda, and there should be a Community Co-Chair who can get issues of importance on the agenda.
- Port Commissioners need training and independent legal advice on the Port's mandated goals and authority to address community engagement.
- Port staff need training to develop a better understanding of community engagement.
- The Port Commission should actively engage stakeholders to come to policy decisions that balance the concerns of both important stakeholders and the Port staff.

Non-Governmental, Environmental and Community Based Organizations

- Need a clear and motivated sense from the Port that they want to collaborate with stakeholders and see the benefits. Will require an institutional culture change coming from leadership.
- In previous stakeholder processes, the community advisory group input was treated as being of considerably less importance than that of the Port's business partners (shippers, beneficial cargo owners).

Small Local and Regional Trade Associations

- The Port needs to create a new vision and plan, with strong Port leadership in partnership with key players and innovators who can help the Port solve its problems. Leadership has been lacking.
- Real importer/exporter business stakeholders are not engaged.
- Create a flexible process for engaging stakeholders. May be less static than a single MSG.
- Environmental issues are sapping energy from the Port's main business.

Substantive Issue Themes Emerging within Each Stakeholder Group

Impacted Residents (Oakland and Corridor Communities)

- Toxic reduction - Trucks a priority because of proximity to residents, but also non-truck emitters. San Leandro residents are also concerned about environmental health issues related to the Oakland Airport.
- Truck traffic/routes, idling and parking and related public health issues.
- Land use solutions for truck issues, especially using the Oakland Army Base to move inappropriate truck uses (parking, trucker amenities) out of communities.
- Future infrastructure projects and impact on community and environment.
- Retention and creation of good local jobs (relates to strong economic performance overall).

Industry – Tenants and Terminal Operators

- Making the Port more business friendly.
- Port becoming more aggressive about marketing and securing market share.
- Optimizing the goods movement system.
- Maintaining a regulatory environment that allows economic growth and reduced environmental impacts. Addressing practicalities of implementation.

Industry – Trade and Logistics

- Stronger leadership creating a clear business vision for Port growth (otherwise the Port will go out of business slowly).
- A Port run with a stronger maritime, business-friendly focus (rather than run as a social and political entity). Ramp up a marketing program.
- Support for emissions regulations and compliance (more consistency, funding resources)
- Port placing greater priority on maximizing efficiency.
- Addressing truckers' issues (terminal access, amenities, parking).
- Assuring local businesses benefit from funding available for clean-up operations

Labor and Workforce Development

- More pro-active, systematic and strategic planning and connection between the Port and its tenants and the workforce development systems in the region.
- Port policies and programs to create quality jobs (or transform low quality jobs to high quality) and improve air quality. Create good career ladder jobs for Oakland and Alameda County residents with lifelong learning opportunities in the goods movement industry cluster.
- Industry needs an ongoing pipeline of qualified workers. Opportunity to partner with industry to identify business trends and future job inventory, projections, and access points.

MAQIP Interagency Group and Other Agencies

- Public health impact of air pollution from operation of diesel vehicles and equipment at the Port (seaside and landside) and Port related traffic in the West Oakland community.
- Real Port action and results on emission reductions to reach MAQIP goal of 85% risk reduction. Implementation of MAQIP and CTMP.

Mayor's Port Task Force

- Economic expansion should proceed, if at all, in an overall strategy to mitigate and remediate environmental and health impacts.

Non-Governmental, Environmental and Community Based Organizations

- Human health risks from Port operations, with special concern for greatly/disproportionately impacted communities.
- Swifter progress from Port on cleaning up pollution from maritime operations. Implementation of MAQIP and CTMP and development of MAQIP beyond its broad vision. Addressing funding strategies.
- Opportunities for land use solutions at the Oakland Army Base.
- Jobs and employment, especially as they relate to changes in the trucking industry.

Small Local and Regional Trade Associations

- Vision, strategic plan and leadership so all know where the Port is going and it can attract business. The Port is losing its competitive edge.
- Stronger Port executive leadership. The Port needs a champion.
- The Port focusing on soliciting trade, customer relations and marketing (deciding that it's not just a landlord).
- Building broad community appreciation for the Port as a key driver to the regional economy. Counteract current frustration and divisiveness.
- Increasing operating capacity and throughput to reduce congestion and improve competitiveness. Support rapid advancement of logistics innovations.

Engagement Requests Emerging within Each Stakeholder Group³

Impacted Residents (Oakland and Corridor Communities)

- Reinstate the Port Good Neighbor Breakfast Meetings.

Industry – Tenants and Terminal Operators

- Small work groups in-between larger MSG meetings to take on ad-hoc problem-solving on specific issues.

Industry – Trade and Logistics

- Create and communicate a business vision for the Port to retain and attract business.
- Ramp up the marketing program working in partnership with business and trade associations.

Labor and Workforce Development

- Develop a regional goods movement sector strategy and apply for EDD funding. Create a goods movement sector partners planning group.

MAQIP Interagency Group and Other Agencies

- Ask Port leadership to clarify if an MSG will be a real collaboration, as currently described, or will actually be a quarterly public workshop for stakeholders to convey concerns.

Mayor's Port Task Force

- Ask Commissioners to hold a town hall meeting before the end of 2009 to hear from all stakeholders.
- Follow-up outreach process with a statement to all stakeholders from the Port Executive and relevant Division Directors indicating the value they see in stakeholder input in relation to the stated goals of the group.

Non-Governmental, Environmental and Community Based Organizations

- Form a multi-sector community body to monitor and enforce the CTMP and MAQIP. The role of this body would be formally recognized by Commissioners and executive level staff.

Small Local and Regional Trade Associations

- Create an Innovation Task Force with key leaders in business and infrastructure making best practice based decisions on rapid adaptation of new logistics technology, while also being environmentally responsible.
- Set up a stakeholder process to develop a Port strategic business plan with a priority on deciding the Port's role in marketing and attracting business. Plan would include environmental concerns.

³ These requests may be folded into a single MSG design or best be responded to with separate ad-hoc groups, each with a specific purpose, composition, and goal.

D. RECOMMENDATIONS AND NEXT STEPS

1. Make a clear leadership statement about formation of a Maritime Stakeholder Group.

Stakeholders are looking for a cue from the Port as to whether the maritime stakeholder group being launched will incorporate lessons learned from previous processes and this outreach project, and ultimately whether participation will be worthwhile and in their best interest. A clear leadership commitment from Port Commissioners, the Executive Director and Maritime Division Director is a key condition for success. The June 4, 2009 letter launching the outreach effort shared a proposed design for an MSG. To move forward, the Port could usefully send out a refined MSG description based on consideration of stakeholder input.

It would be ideal to send a clear signal back to participating stakeholders without delay. This may require working through appropriate Board committees to agendize a Board policy guidance action item on the formation of an MSG.

The statement should be an accurate, forthright description of what level of engagement can be expected by stakeholders, including any constraints. The scale of the stakeholder engagement effort must be calibrated to be realistic for the Port to sustainably implement. Past stakeholder frustration resulted from inconsistent follow-through.

Questions to address in the statement include:

- What does the Port see as the value of establishing an MSG? What will be the MSG's function?
- What assurances or clarifications can be offered in response to the issues identified in the summary chart "Going Forward: Key Conditions for Meaningful Stakeholder Engagement" (see page 8)?
- What agenda topics are anticipated in the first 6-12 months? What major policy decisions are coming up?
- Are there any constraints or concerns to share up front? Anything that will be off the table?

A key decision to make early on is whether the Commission will charter the MSG and have it report directly to the Commission as a standing agenda item.

A second important early design question for the MSG relates to the specific function of monitoring and enforcing the MAQIP and CTMP. Some NGOs have mentioned seeking stakeholder voting power in this role as a way to ensure meaningful influence. They suggested looking at the Port's Maritime Aviation Project Labor Agreement (MAPLA) Social Justice Committee as a potential model. It is possible that a representative multi-sector sub-group of the MSG could best play this oversight role. The Port needs to consider its response to proposals for shared decision-making (this will likely require some follow-up with the NGOs).

The Port began this process envisioning a single MSG forum for continued stakeholder engagement in Port Maritime projects, with particular attention to an on-going process for monitoring of and input on the MAQIP and CTMP, as well as Port seaport projects. Given stakeholder input, the MSG scope could be expanded to include projects that impact land use as well as reuse of the Oakland Army Base specifically.

While a single stakeholder advisory group forum is attractive to the Port as an efficient solution for maintaining stakeholder relations, it may not suffice. Other needs flagged by stakeholders might best be met by convening distinct working groups (could be ad-hoc to start during the pilot

year), each with a specific purpose, composition and goal. The advantage of convening these specific groupings is that stakeholders working most closely on those issues could have substantive working meetings with relevant Port staff. This would facilitate a more meaningful level of information sharing, joint problem-solving and crafting recommendations for policy makers. The overall MSG could review and comment on the activities of these working groups.

Stakeholder engagement requests that might best be met by creating distinct working groups:

- Logistics innovation to maximize efficiency (e.g., strong industry interest in revisiting the cold-ironing decision and consider more cost-effective alternatives to reach emission reduction goals).
- Strengthening the Port's marketing program in partnership with business stakeholders.
- Creating a regional goods movement sector workforce development strategy.
- Creating a Port strategic business vision and plan.
- Meetings with impacted residents and NGOs in fenceline and corridor communities to make progress on specific truck issues (not requested as a separate meeting by stakeholders, but recommended for consideration by the consultant).

It would also be useful to inform stakeholders which maritime-related forums convened by others the Port intends to participate in and in what capacity (e.g., City-Port Liaison Committee, Port of Oakland's Trucker Work Group, Oakland Chamber of Commerce, Oakland Partnership Industry Cluster Logistics Task Force, Bay Area Trade Coalition Group).

After Port leadership agrees on the scope and design parameters of the future MSG, on-going internal follow-through needs leadership attention to ensure all staff responsible for engaging stakeholders are aligned with the effort and have the skills and resources necessary to succeed.

2. Design operating guidelines for the MSG and first year's activities

After Port leadership provides policy guidance on the parameters for an MSG and any other stakeholder groups to be formed in response to outreach feedback, the Port can work with the outreach consultant to draft operating guidelines for the formation of the stakeholder group(s) and the first pilot year of activities.⁴ The design would follow the Commission's policy guidance and draw from stakeholder input. Many of the process tools used in the MAQIP process can inform the design of the MSG, with important improvements put in place in response to feedback on lessons learned.

Proposed operating guidelines should be reviewed by the MSG, and any other groups formed, at their initial meeting(s) to ensure that conditions for success are in place.

3. Convene a meeting of stakeholders in Fall 2009.

Some months have passed since the last MAQIP and CTMP stakeholder meetings. However, it may take the remainder of 2009 to finish designing and implementing procedures for officially forming a newly constituted MSG that meaningfully takes into consideration the outreach feedback. For example, the member selection process is likely to take some time.

⁴ The MSG is envisioned as an on-going stakeholder group. However the Port is designating the first year as a pilot to facilitate getting the group started without excessive process and to proceed with a clear intent to further refine design and procedures based on experience and need.

In the meantime, the Port should look for options to convene a Fall 2009 meeting to fill the gap between the old and new advisory processes and facilitate monitoring of and input on the MAQIP and CTMP, as well as Port seaport projects impacting land use. Stakeholders have listed issues of concern to tackle during the first 6-12 months of the proposed MSG, and this information could be used to shape agenda design. The outreach invitation list would be a good starting point for participants to invite to such a “bridging” meeting.

The consultant recommended that the Port consider how the October 5, 2009 *State of the Port* meeting could help to fulfill this bridging function. The Port did decide to expand the invitation list for the 2009 event to include outreach participants. Another option is the Mayor’s Port Task Force suggestion to hold a town hall meeting to hear from all stakeholders before the end of 2009.

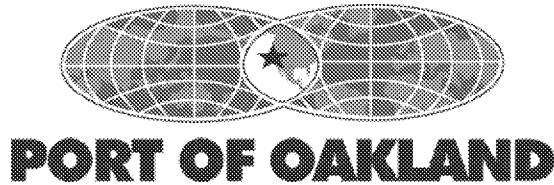
4. Identify opportunities for taking more immediate action.

It would be useful for the Port to identify and respond to issues surfacing in the outreach process that extend beyond the scoping and design of an MSG. There are many potential “win-win” actions that would both: 1) demonstrate the Port’s willingness to listen to and act on input gathered through this process, which will help improve stakeholder relations, and 2) achieve real results in priority areas for improving Maritime operations.

This is also a good time for Port staff to revisit early actions for implementation prioritized during the later stages of the MAQIP and CTMP stakeholder processes to determine whether they have been accomplished or not and what follow-through may need attention. Brief updates from the staff responsible for implementation could be shared with the former members of those groups by e-mail.

APPENDICES

APPENDIX 1. Letter of invitation to stakeholders to participate in outreach



June 4, 2009

Dear Port Stakeholder,

Recently, the Port of Oakland completed its Maritime Comprehensive Truck Management Plan (CTMP) after a 2-year multi-stakeholder process. This plan, with special thanks to many of you who endured the process, will be returning to the full Board on June 16 for consideration and adoption. Also, earlier this year, the Port of Oakland Board of Port Commissioners adopted its Maritime Air Quality Improvement Plan (MAQIP) completing a more than 2-year multi-stakeholder process that included an Interagency Work Group. As a result of those stakeholder processes and other drivers, the Port committed to create an on-going opportunity for stakeholder involvement.

The Port is seeking to design a forum that serves as a single opportunity for continued public involvement focused on Port Maritime projects with particular attention to an on-going process for monitoring and input of the MAQIP and CTMP as well as Port seaport projects. In doing so, **we are seeking your assistance and input as part of our outreach effort in designing this process by completing a survey and by participating in a focus group – this is distinct from a subsequent process to select membership.**

Your assistance to fill out an on-line survey (*accommodations can be made for those wishing to participate with hard copy option*) will require approximately 20-30 minutes of your time to complete. Your completed survey will be due by 12:00 noon on Friday, June 12. A separate e-mail/letter is coming shortly with survey instructions from the consultant who will be independently conducting and collecting all survey results.

Background/History:

Before going further, I believe it is important to take a moment to provide some history and background leading up to this design process.

In 2005, the Port began discussions with the West Oakland Environmental Indicators Project (WOEIP), who reached out to the Port, about creating a Port stakeholder group that would provide an on-going forum for *fenceline* residents to have access to the Port in addressing impacts on their quality of life that may be a result of Port operations. Additional meetings and best practices were exchanged with presentations and research of the Port's Maritime and Aviation Project Labor Agreement (MAPLA) Social Justice Program, the Port of Los Angeles Community Advisory Committee (PCAC) and other Port and external stakeholder groups and processes.

Later in 2007, the Honorable Ron Dellums, while campaigning and eventually winning the seat as Mayor of the City of Oakland, initiated the Mayor's Task Force with one specifically focused on the Port of Oakland. After nearly 1 1/2 years, the Task Force made the following recommendation, among others encouraging the Port of Oakland to continue community involvement of the Maritime Air Quality Improvement Plan (MAQIP) and the Comprehensive Truck Management Plan (CTMP); and to create a Port community advisory committee. This recommendation was also endorsed by the Oakland Partnership, which is facilitated by the Oakland Chamber of Commerce on behalf of the Mayor.



Outreach Process to Design a Port Maritime stakeholder forum

Page 2 of 3

Over the past decade, the Port has been seeking ways to improve its response to economic, social and environmental implications of Port maritime operations on neighboring communities in a way that manages Port resources and respects stakeholder participation and time. Initially, it took a lawsuit by the West Oakland Neighbors in the late 1990s, resulting in many spirited discussions with the community, in particular West Oakland Neighbors and the West Oakland residents at-large. In turn, it created a significant culture shift in the way the Port does business and the Port is committed to continuing to improve in that area. In an effort to improve its relations with the community, the creation of a Maritime-focused stakeholder process seeks to also build upon successful Port stakeholder processes (i.e., MAPLA Social Justice Program, Aviation Stakeholder Group and Airport-Community Noise Forum). Moreover, one that considers the uniqueness of Oakland, in particular West Oakland.

In 2008, the Port conducted an inventory of all Port stakeholder processes (formal and informal) and began preliminary assessments for continued public involvement. Unfortunately, over the past few years, the Port has experienced on-going challenges with its financial health drawing out the process due to change over of staff, limited resources (Port staff time and funding for expert consultants to work on the design of a single maritime stakeholder process).

The good news is that we are back on track, consistent with communications outlined in both the MAQIP and CTMP. The Port is pleased to announce that we have hired and expanded the role of Viveka Chen & Associates who will be running the outreach process to design the stakeholder forum and will also be facilitating the first year of the pilot launch. (See attachment 2 for Facilitator bio)

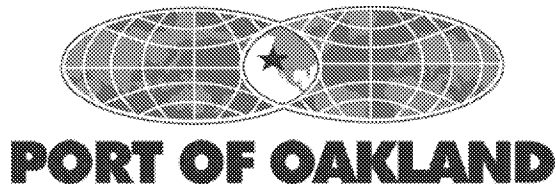
Definitions:

Maritime is defined as the Port of Oakland Seaport, which serves as the principal ocean gateway for container cargo in Northern California. It is further defined geographically as the area situated along the Oakland waterfront that extends from the border of Emeryville into the western banks of Jack London Square, Oakland. The seaport includes approximately 1,210 acres of water area and land-side facilities and provides an interface for waterborne international and domestic cargo moving between inland points in the United States and the Pacific Basin, as well as other points in the world. The seaport is a landlord port.

Stakeholder for this process is defined as any person that has an interest in the implementation of the Port of Oakland's Maritime operations related to MAQIP implementation including the CTMP and Maritime project development.

Proposed functions of the group:

- Keeping communication flowing between member's stakeholder groups and the Port of Oakland;
- Creating a venue for the Port to educate and share information about Maritime operations;
- Providing early input on possible impacts of projects and operations on stakeholder groups;
- Establishing a feedback loop for how implementation is going from the experience of the stakeholders on the group;
- Monitoring to help keep the Port on track;
- Advising program design; and
- Assisting with advocacy



Assumptions:

- The assumption is that other Port stakeholder groups that are working will remain as they are. Attachment 3 depicts our various stakeholder groups graphically for your information. This is to avoid disrupting those processes that are working or to make them less efficient, especially since many of these have been in place for at least 10 years. Furthermore, to respect those stakeholder participants who have invested in these standing processes.
- There is a possibility to connect with other stakeholder groups and take a larger birds' eye view of the Port at an annual gathering.

Outreach process timing:

The outreach process will continue through mid June into early July 2009 in anticipation of a first Maritime stakeholder meeting by Fall/Winter 2009. This group will provide a formal opportunity for the Port and its stakeholders to meet on a regular basis. It is proposed that these meetings be held on a quarterly basis. The approach is for the first year to serve as the pilot year, which will allow for regular check-in along the way to see what's working and what might improve the process and its results. As conveyed earlier, Viveka Chen & Associates will facilitate the first year pilot.

Conclusion:

On behalf of the Port of Oakland, I would like to thank you for your patience and participation in past Port outreach and stakeholder involvement opportunities and to further thank you in advance for your participation in this outreach effort to design an on-going Maritime stakeholder forum. With your help, the Port hopes to establish a new, single maritime stakeholder group to discuss and seek input on seaport-related projects with particular monitoring of the MAQIP and CTMP.

Sincerely,

Diann Castleberry
Director of Social Responsibility

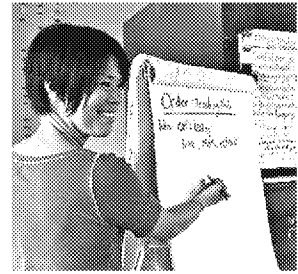
Enclosures

Cc: Viveka Chen, Viveka Chen & Associates
Omar Benjamin, Executive Director, Port of Oakland
Laura Arreola, Community Relations, Port Social Responsibility Division

APPENDIX 2. Letter inviting participation in outreach survey

Viveka Chen & Associates
viveka@igc.org

819 Hampshire St.
San Francisco, CA 94110
415-282-5918



June 4, 2009

Dear Port of Oakland Maritime Stakeholder:

Recently you received a letter from the Port of Oakland outlining an outreach process to inform establishment of a Maritime Stakeholder Group. If you have not yet read that letter please do. It provides the fuller background you will need to understand the context of this survey invitation.

If you are receiving this correspondence you are being invited to participate in a survey requesting your input on the formation of a Port of Oakland Maritime Stakeholder Group. Your feedback is important. In order to support a constructive input process and your ability to provide full and honest feedback, the survey and focus group themes will be reported by the consultant to the Port without attribution. None of your specific comments will be identified with your name.

Responding via the on-line web survey is preferred, however, those without convenient internet access can phone the consultant to request a hard copy of the survey to submit by mail.

To access the web survey, please click on the following link or cut and paste it into the address bar of your browser.

http://www.surveymonkey.com/s.aspx?sm=txtW86HKhRIVg0giPr88Kw_3d_3d

The web survey must be completed all in one session. The 6 sections will likely take 20-30 minutes to fill out. A copy of the questions that you will find on-line is attached. If you encounter technical difficulties please contact the consultant directly (contact information on the above letterhead).

If you feel someone else from your organization should complete this survey instead, then please contact the consultant with that contact information.

Responses are due by noon, Friday June 12, 2009.

Thank you in advance for your valuable guidance.

Viveka Chen

Consultant

Viveka Chen and Associates

THE PORT OF OAKLAND MARITIME STAKEHOLDER GROUP OUTREACH SURVEY

QUESTIONS POSTED ON THE WEB SURVEY

Launched June 4, 2009

The survey is now available on-line. Please click on the following link to respond:

http://www.surveymonkey.com/s.aspx?sm=xxtW86HKhRIVg0gjPr88Kw_3d_3d

Or...cut and paste it into the address bar of your browser.

Responding via the on-line web survey is preferred, however, those without convenient internet access can phone the consultant at 415-282-5918 to request a hard copy of the survey to submit by mail.

Thank you for making time to fill out the Port of Oakland's Maritime Stakeholder Group Outreach Survey.

The survey must be completed all in one session. The 6 sections will likely take 20-30 minutes to fill out. If you cannot complete the full survey now, please return later when you have sufficient time.

Please make sure to proceed through all 6 pages (a "next" button at the bottom of each page will easily navigate you to the next page). You will know you have successfully completed the survey when you get to page 6 with the title "THANK YOU."

If you encounter technical difficulties contact the consultant directly at viveka@igc.org

Responses are due by noon, Friday June 12, 2009.

Thank you in advance for your valuable guidance.

Viveka Chen

Viveka Chen and Associates

1. BACKGROUND

1. Name
2. Organization

2. STAKEHOLDER POINT OF VIEW

1. What are issues of greatest concern, from your stakeholder perspective, regarding the Port of Oakland's Maritime Operations?

The proposed key functions of this stakeholder group are:

- *Keeping communication flowing between member's stakeholder groups and the Port*
- *A venue for Port to educate and share information about Maritime operations*
- *Providing early input on possible impacts of projects and operations on stakeholder groups*
- *Establishing a feedback loop for how implementation is going from the experience of the stakeholders on the group*
- *Monitoring to help keep the Port on track*
- *Advising program design*
- *Assisting with advocacy*

The group is envisioned as meeting quarterly with a first meeting anticipated by Fall/Winter 2009.

2. Is participation in such a Maritime Stakeholder Advisory Group likely to be something you or your organization would seriously consider and why?

If you do *not* envision participating in the proposed Maritime Stakeholder Advisory Group (*skip this question if you would consider participation in the group and go to question #4*):

3. What alternate requests do you have for how the Port could best stay in good communication with your stakeholder group?

If you do not envision participation and answered #3, please skip questions #4-7 and go directly to the next section/page

If you would consider participation in the proposed Maritime Stakeholder Advisory Group:

4. What would make participation in a Maritime Stakeholder Advisory Group worth your time?
5. What would success look like a year from now as a result of this group forming and meeting?
6. What would be your top three agenda items for the group in its first 6-12 months and why? (Initial meeting anticipated Fall/Winter 2009)
7. Is there any important business before a Fall/Winter 2009 meeting that warrants an ad hoc solution for stakeholder input? If so, please describe what is needed.

3. FOR PARTICIPANTS IN THE MARITIME AIR QUALITY IMPROVEMENT PLAN TASK FORCE ONLY:

1. Please provide your thoughts on what worked and didn't work in your experience of the MAQIP Task Force effort as relevant to the launching of a future Maritime Stakeholder Group

4. FOR PARTICIPANTS IN THE COMPREHENSIVE TRUCK MANAGEMENT PLAN (CTMP) TECHNICAL ADVISORY COMMITTEE ONLY:

1. Please provide your thoughts on what worked and didn't work in your experience of the CTMP Technical Advisory Committee effort as relevant to the launching of a future Maritime Stakeholder Group

5. LOGISTICAL QUESTIONS:

1. Please indicate all of the windows of time you are available to participate in a one hour and fifteen minute follow-up focus group session on the following dates and time ranges

(Evening meeting times are anticipated for impacted residents and those are available June 25, 5-6:15pm and anytime in the range from 5-8pm on June 30 and July 1)

- June 24, Wednesday, 3:00-5:00pm
- June 25, Thursday, 9:00-6:15pm
- June 29, Monday 9:00-5:00pm
- June 30, Tuesday, 9-11:30am
- June 30, Tuesday, 3:00pm-8:00pm
- July 1, Wednesday, 9:00-10:00am
- July 1, Wednesday, 11:00am-8:00pm

2. Who from your group would most likely and appropriately participate?
3. The Port sent out a letter listing the stakeholders included in this outreach effort. Are there other groups you are aware of that should be involved? If yes, which ones, any particular individual, and why?

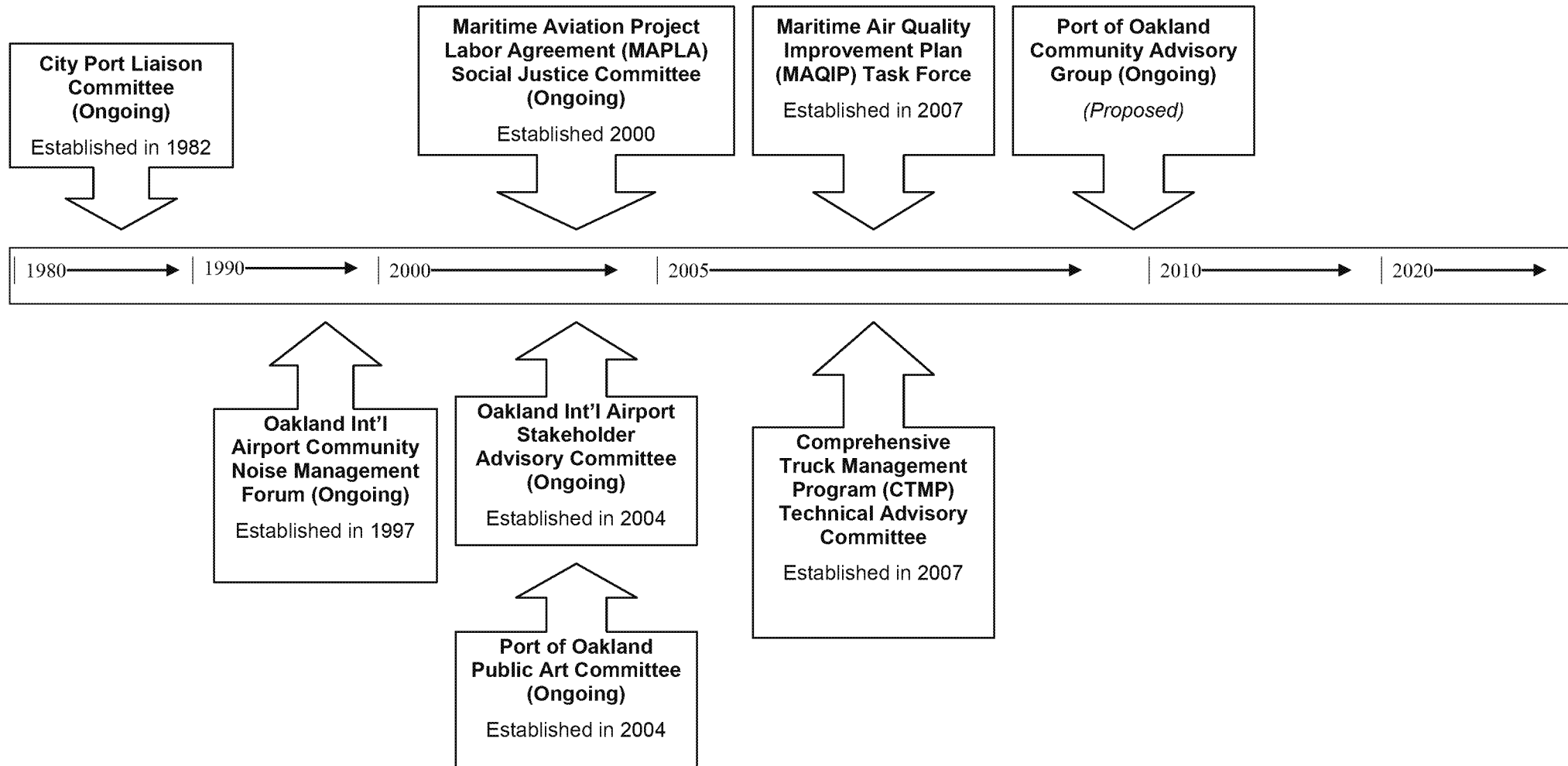
6. THANK YOU

You have successfully completed the survey.

If you have any further questions please contact:

- Outreach Consultant, Viveka Chen at viveka@igc.org 415-282-5918, or
- Port of Oakland Community Affairs staffperson Laura Arreola at larreola@portoakland.com 510-627-1135

Port of Oakland Stakeholder Groups



APPENDIX 4. Participant List

PORT OF OAKLAND MARITIME STAKEHOLDER ADVISORY GROUP JUNE/JULY 2009 OUTREACH PROCESS

STAKEHOLDER PARTICIPANT LIST

INDUSTRY – TENANTS AND TERMINAL OPERATORS

Survey respondents:

- Darcy Wheelles - California Environmental Associates - consultant to the Association of American Railroads (Union Pacific Railroad and BNSF Railway in California)
- John McLaurin - Pacific Merchants Shipping Association

June 24 - 2009 Focus Group Participants:

- John McLaurin - Pacific Merchants Shipping Association
- Jack Murphy - Eagle Marine Services - LTD
- Mike Porte - TraPac Inc. - General Manager of Terminal Operations
- Carlos Rivera - Horizon Logistics - shipping to Honolulu and Guam
- Sarah Weldon – Environmental Consultant working with the Association of American Railroads in California on air quality

SMALL LOCAL AND REGIONAL TRADE ASSOCIATIONS

Survey respondents:

- Michael Cunningham - Bay Area Council
- Ellen Joslin Johnck - Bay Planning Coalition
- Sugiarto Loni - Oakland Chinatown Chamber of Commerce
- Melody Marr - Alameda Chamber of Commerce
- Scott Peterson - Oakland Metropolitan Chamber of Commerce

June 24 - 2009 Focus Group Participants:

- Jose Duenas - Center for International Trade Development (Bay Area World Trade Center) and State Task Force on International Trade
- Dave Johnson - San Leandro Chamber of Commerce
- Ellen Joslin Johnck - Bay Planning Coalition
- Bruce Kern - East Bay Economic Development Alliance
- Steve Lowe - West Oakland Commerce Association and Co-Convenor of Mayor's Port Task Force
- Jennie Ong - Oakland Chinatown Chamber of Commerce
- Melody Marr - Alameda Chamber of Commerce
- Scott Peterson - Oakland Metropolitan Chamber of Commerce
- Ron Silva - Hispanic Chamber of Commerce of Alameda County

INDUSTRY – TRADE & LOGISTICS

Survey respondents:

- Bill Aboudi - AB Trucking
- Richard Coyle - California Trucking Association

- Harry Mamizuka - NorCal Kenworth
- Alan Osofsky - Rodgers Trucking Company

June 25 - 2009 Focus Group Participants:

- Bill Aboudi - AB Trucking
- Andy Garcia - GSC Logistics
- Ron Light - West State Alliance
- Alan Osofsky - Rodgers Trucking Company and the Truckers Work Group
- Karen Vellutini - Devine Intermodal

MAQIP INTERAGENCY AND OTHER AGENCIES

Survey respondents:

- Mike Bandrowski - US Environmental Protection Agency (EPA). Also participated in MAQIP Interagency Working Group and Mayor's Port Task Force.
- Matt Beyer - Alameda County Public Health Department. Also participated in MAQIP Interagency Working Group
- Carolyn Clevenger- Metropolitan Transportation Commission
- Richard Grow - US Environmental Protection Agency (EPA), Air Division. Also participated in MAQIP Interagency Working Group and Mayor's Port Task Force.
- Cynthia Marvin - California Air Resources Board (CARB). Also participated in MAQIP Interagency Working Group.
- Tara Reinertson - Middle Harbor Shoreline Park - East Bay Regional Park District (also a West Oakland resident)
- Amy Zimpfer - US Environmental Protection Agency (EPA). Also participated in MAQIP Interagency Working Group and Mayor's Port Task Force.

June 30 - 2009 Focus Group Participants:

- Carolyn Clevenger- Metropolitan Transportation Commission
- Richard Grow - US Environmental Protection Agency (EPA). Also participated in MAQIP Interagency Working Group and Mayor's Port Task Force.
- Cynthia Marvin - California Air Resources Board (CARB) with Carolyn Suer, Cathryn Cardoza and Judy Friedman (all joining by phone). Also participated in MAQIP Interagency Working Group.
- Tara Reinertson - Middle Harbor Shoreline Park, East Bay Regional Park District (also a West Oakland resident)
- Dr. Sandra Witt - Alameda County Public Health Department. Also participated in MAQIP Interagency Working Group.

NONGOVERNMENTAL - ENVIRONMENTAL AND COMMUNITY-BASED ORGANIZATIONS:

Survey respondents:

- Brian Beveridge - West Oakland Environmental Indicator's Project
- Diane Bailey - Natural Resources Defense Council
- Nehanda Imara - Communities for a Better Environment
- Andy Katz - Breathe California
- Dorothy Poston - West Oakland Senior's Center
- Swati Prakash - Pacific Institute and Ditching Dirty Diesel Collaborative

June 30 - 2009 Focus Group Participants:

- Wafaa Aborashed- Bay Area Healthy Communities - and Ditching Dirty Diesel Collaborative
- Brian Beveridge - West Oakland Environmental Indicator's Project
- Andy Katz - Breathe California
- Dorothy Poston - West Oakland Senior's Center
- Queen Thurston - Economic Council of West Oakland and also works with Dr. Burns at the Prescott Joseph Center.
- Aditi Vaidya – East Bay Alliance for Sustainable Development (EBASE)

LABOR & WORKFORCE DEVELOPMENT**Survey respondents:**

- Sharon Cornu - Alameda Labor Council, AFL-CIO
- Berit Eriksson - Workforce Development, Sailors' Union of the Pacific
- Earl Johnson - Oakland Mayor's Office and Interim Executive Director of the Oakland City Workforce Investment Board (WIB)

July 1 - 2009 Focus Group Participants:

- William Bartelson - Pacific Maritime Association
- Garlin Cephas - Oakland Trade Academy, Oakland Unified School District
- Gay Plair Cobb - Oakland Private Industry Council - Inc.
- Brian Cook - Continuing & International Education, California State University, East Bay
- Sharon Cornu - Alameda Labor Council, AFL-CIO
- Rene DuCroux - ILWU Local 34
- Berit Eriksson - Workforce Development, Sailors' Union of the Pacific
- Sean Farley - ILWU Local 34
- Lorraine Giordano - ATLAS Project, College of Alameda
- Zach Goldman - Change to Win
- Lawrence Thibeaux - ILWU 10

MAYOR'S PORT TASK FORCE**Survey respondents:**

- Brian Beveridge - West Oakland Environmental Indicator's Project
- Richard Grow - US Environmental Protection Agency (EPA), Air Division
- Ray Kidd - West Oakland Neighbors

July 1 - 2009 Focus Group Participants:

- Brian Beveridge - West Oakland Environmental Indicator's Project
- Jose Duenas - Bay Area World Trade Center and State Task Force on International Trade
- Margaret Gordon - served on the Mayor's Task Force in her capacity as Co-Director of West Oakland Environmental Indicator's Project (also a Port Commissioner)
- Richard Grow - US Environmental Protection Agency (EPA, Air Division
- Ray Kidd - West Oakland Neighbors
- Steve Lowe - West Oakland Commerce Association

IMPACTED RESIDENTS – OAKLAND & CORRIDOR COMMUNITIES

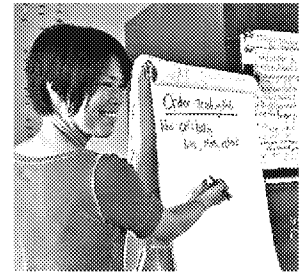
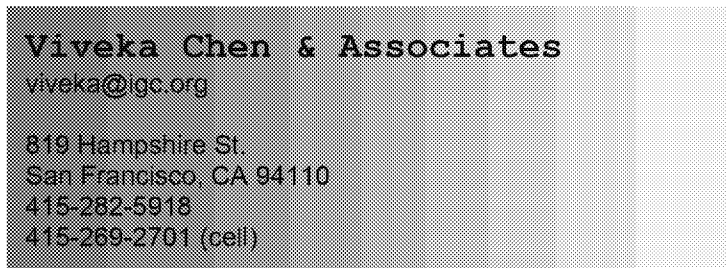
Survey respondents:

- Brian Beveridge – West Oakland resident (also works at West Oakland Environmental Indicators Project)
- Ray Kidd – West Oakland resident (also represents West Oakland Neighbors)
- Daryl Meshack – West Oakland resident
- Ellen Wyrick Parkinson – West Oakland resident
- Viviana Rodriguez-Smith – West Oakland resident (also works at La Clinica de la Raza)
- Sandra V. Sanders West – West Oakland resident (also works at West Oakland Police Department)

July 1 - 2009 Focus Group Participants:

- Frank Gallo – San Leandro resident (also member of Ditching Dirty Diesel Collaborative)
- Sylvester Grisby- East Oakland resident (involved in the Coliseum Neighborhood Council)
- Jacquee Castain- East Oakland resident
- Viviana Rodriguez-Smith – West Oakland resident (also works at La Clinica de la Raza)
- Queen Thurston - – West Oakland resident (also works at Economic Council of West Oakland and works with Dr. Burns at the Prescott Joseph Center)

APPENDIX 5. Consultant Bio



CONSULTANT BIO

Updated June 2009

Viveka Chen provides culturally competent organizational and community consulting and facilitation services. She specializes in multi-stakeholder collaboration, strategic planning and executive transitions. Since 1990, she has worked as a trusted partner with low-income communities of color and their allies to advance racial, social and environmental justice. Viveka has played a key role in several large-scale field-building initiatives in collaboration with organizations such as the Movement Strategy Center, San Francisco Foundation, Annie E. Casey Foundation, and CompassPoint Nonprofit Services. Prior to consulting, Viveka was Executive Director of the East Bay Conversion & Reinvestment Commission and Associate Director of Urban Habitat. She has served on several nonprofit boards of directors continuously for over a decade. Viveka is chairwoman, board member and a teacher at the San Francisco Buddhist Center and leads retreats and workshops to help individuals and communities of activists sustain their service and work together with the support of meditation and reflective practices.

Her work related to Ports and goods movement began during the 1995 Oakland Army Base and Fleet Industrial Supply Center base closures and her related community planning work at the East Bay Conversion & Reinvestment Commission. During that time Viveka was exposed to the land use and toxics issues related to the development and use of waterfront industrial sites and their proximity to adjacent communities of color with environmental health and justice and equitable community development impacts and concerns. Many of the planning processes Viveka engaged in at EBCRC and subsequently at Urban Habitat sought to engage equity concerns with environmental and economic concerns in the pursuit of sustainable development.

More recently Viveka has worked as a facilitator of diverse stakeholder processes addressing sustainable development related to the Port of Oakland and goods movement in several capacities including:

- Facilitator and process advisor contracted by the Port for Maritime stakeholder processes including the latter half of the Comprehensive Truck Management Program Technical Advisory Committee and design of a Maritime Stakeholder Group
- Facilitator and process advisor for the West Oakland Toxic Reduction Collaborative funded by the US EPA and co-chaired by the West Oakland Environmental Indicators Project and US EPA
- Neutral consultant and mediator contracted by non-governmental organizations (labor, grassroots groups and community-based organizations, and policy intermediaries) to facilitate various strategic multi-stakeholder conversations

- Consultant in the EH +EJ Consulting Group contracted by The California Endowment to design and facilitate statewide convenings for grantees across California working on freight transport and environmental health and justice concerns

Message

From: Grow, Richard [Grow.Richard@epa.gov]
Sent: 12/4/2017 9:26:16 PM
To: fitzpatrick@dot.gov
CC: Temple, Kurt [Temple.Kurt@epa.gov]
Subject: FYI: Truck Management Plan - studies and scope

Ryan (cc Kurt)

FYI my note to the City and Port following up on last Thursday night's community meeting hosted by WOEIP, EDF and UC Berkeley, and the Saturday meeting/tour hosted by the City and Port. I sent this to basically memorialize the discussion that took place during the wrap-up of the Saturday meeting. FYI Claudia Cappio has retired from the City (was the Mayor's right hand deputy for this issue) and there is a new Planning director, William Gilchrist. Since within City government it is mainly the Planning department that is on point for all things Port/OAB, he is in a pivotal role. He and I and Ms. Margaret had a nice chat, and at the close of the meeting he went out of his way to come over and say he was glad we met and have a lot to talk about. For the past year we had been dealing with Darren Ranaletti as acting planning director, a friendly and articulate presence but with limited ability to change course. I have no clue how these two changes affect the playing field, but it's hard to see how it could get anything but better.

Perhaps not obvious in my note is why it was needed, which was that it was very plain that the City was aimed at a fairly quick and tightly choreographed 5 step process that was going to fall far short of what the community - by which I include many parties beyond Ms. Margaret and Brian - feel is needed. The scope issue is critical but has not been plainly discussed until now.

Richard

From: Grow, Richard
Sent: Monday, December 4, 2017 11:49 AM
To: PMcGowan@oaklandnet.com
Cc: wgilchrist@oaklandnet.com; sggrant@envirocommunications.com; agardner@portoakland.com
Subject: Truck Management Plan - studies and scope

Patricia McGowan (cc William Gilchrist, Andrea Gardner, Surlene Grant)

This note is to follow up on the suggestion I put forward at the excellent community workshop on trucks in West Oakland which you hosted this past Saturday. In my remarks Saturday I made reference to a suggestion previously put forward by Ms. Margaret Gordon of the WOEIP at the July 10 meeting at City Hall which you also hosted, and during which EDF presented the findings from its "Street View" project documenting on a fine scale (block by block) the levels and distribution of black carbon. At the July 10 meeting Ms. Gordon suggested that the 20 or so parties gathered around the table, representing perhaps a dozen organizations, agencies and interests, work collaboratively together to assess and address the implications of the studies findings with regard to mitigation of the effects revealed by the study.

My suggestion this past Saturday was that you, along with others carrying out this latest "truck management plan" exercise, incorporate into the current planning effort time to for participants in the planning effort to consider the EDF/Google study as well as a more recent UC Berkeley assisted "100 x 100" West Oakland black carbon monitoring study. As I mentioned Saturday, there may be no community in the country for which there is a richer availability of local scale air pollutant data. It seems here that it would be unfortunate to not make use of this information in coming up with a truck plan addressing the public health impacts of truck-related operations in West Oakland.

Regarding the scope of the TMP, I hope you will be open to the possibility that consideration of this additional information could have some effect on the scope of the plan itself. It was clear from the discussions Saturday that the issue of the scope of the TMP is itself an issue of quite some concern to many stakeholders. This also goes to the assurances I had previously received from both yourself and Claudia Cappio at the August 23 Air Quality Stakeholders meeting, assurances that the scope of the TMP had not already been set, but would rather be set by way of the interactive process which you would be convening this fall. I found this encouraging, as well as consistent with the language of mitigation measure 4.3-7, committing to a truck management plan and enumerating 8 potential "elements", while also including the caveat that the plan "is not limited to" that list of elements.

I understand that you have been assuming the viability of a "five step" planning process as laid out at the Saturday meeting, with the next (i.e. third) meeting to be focused on "prioritization" of measures proposed by City staff based on the first two meetings, and acknowledge that my suggestions might result in the TMP process taking a bit longer, but hope that you will consider whether they might also add to the quality of and support for the plan. There may be some logic in getting a common understanding of, and agreement on, the scope of the plan before moving on to prioritizing components of the plan.

Please feel free to call me directly to discuss this further, and thanks again for the very educational event this past weekend.

Richard Grow
US EPA
Region 9
(415) 947-4104

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 5/31/2017 2:41:18 PM
To: Brian Beveridge [brian.woeip@gmail.com]
Subject: Brian: REMINDER: Wednesday May 31, 1-2pm for OAB update call/meeting

Hi Brian – I'm hoping this still works for you. I'm planning to field the call from your office, which Margaret confirmed yesterday was OK. No EDF in the room as I understand. Richard

From: Grow, Richard
Sent: Tuesday, May 30, 2017 9:12 AM
To: 'Brian Beveridge' <brian.woeip@gmail.com>; 'Margaret Gordon' <margaret.woeip@gmail.com>; 'Marvin, Cynthia@ARB' <cynthia.marvin@arb.ca.gov>; 'Yura, Elizabeth@ARB' <eyura@arb.ca.gov>; 'David Vintze' <DVintze@baaqmd.gov>; 'Alison Kirk' <AKirk@baaqmd.gov>; 'anna.lee@acgov.org' <anna.lee@acgov.org>
Subject: REMINDER: Wednesday May 31, 1-2pm for OAB update call/meeting

Call in number is **Conference Line/Code / Ex. 6** Wednesday, May 31, 1-2 pm. Please review the email chain below for the context and need for this call. Thank you.

Richard
Office: (415) 947-4104

Personal Matters / Ex. 6

From: Grow, Richard
Sent: Thursday, May 18, 2017 1:35 PM
To: 'Brian Beveridge' <brian.woeip@gmail.com>; 'Margaret Gordon' <margaret.woeip@gmail.com>; 'Marvin, Cynthia@ARB' <cynthia.marvin@arb.ca.gov>; 'Yura, Elizabeth@ARB' <eyura@arb.ca.gov>; 'David Vintze' <DVintze@baaqmd.gov>; 'Alison Kirk' <AKirk@baaqmd.gov>; 'anna.lee@acgov.org' <anna.lee@acgov.org>
Subject: Confirming Wednesday May 31, 1-2pm for OAB update call/meeting

Looks like our best bet is Wednesday, May 31 from 1-2 pm. Please protect that time slot and I'll tie down a conference room and location for those who want to gather together. This will be the day after the City's second meeting with the agencies so we may know more about the City's approach by then. Thanks

Richard

From: Grow, Richard
Sent: Thursday, May 18, 2017 12:12 PM
To: Brian Beveridge <brian.woeip@gmail.com>; Margaret Gordon <margaret.woeip@gmail.com>; Marvin, Cynthia@ARB <cynthia.marvin@arb.ca.gov>; Yura, Elizabeth@ARB <eyura@arb.ca.gov>; David Vintze <DVintze@baaqmd.gov>; Alison Kirk <AKirk@baaqmd.gov>; anna.lee@acgov.org
Subject: Week of May 30: RSVP Date check: OAB update call/meeting

All

OK, from the replies I see we're trying to thread the needle and are missing several principals. This discussion is not only an update but a basic check on alignments going forward, so we need full participation. The City's May 30 meeting (2-3:30) is only the second of three. Dave V. should be back in the office by the week of May 30, hopefully Cynthia. How do your calendars look Weds – Friday, May 31 – June 2 ?

Richard

From: Grow, Richard

Sent: Wednesday, May 17, 2017 8:47 PM

To: Brian Beveridge <brian.woeip@gmail.com>; Margaret Gordon <margaret.woeip@gmail.com>; Marvin, Cynthia@ARB <cynthia.marvin@arb.ca.gov>; Yura, Elizabeth@ARB <eyura@arb.ca.gov>; David Vintze <DVintze@baaqmd.gov>; Alison Kirk <AKirk@baaqmd.gov>; anna.lee@acgov.org

Cc: grow.r@att.net

Subject: RSVP Date check: OAB update call/meeting week of 5/22

All

Per the exchange below, it looks like this could be a good time to catch up with each other, especially with the City's cancellation of tomorrow's (May 18) agency/City meeting on mitigation plans. With the next City meeting with the agencies set for May 30, I suggest we aim for a call/meeting sometime next week, the week of May 22. Please get back to me with any *unmoveable* constraints on your schedule for next week and we'll try to find a time that works for all. I can set up a conference line.

My only unmoveable conflicts are:

Monday 5/22 8-10

Tuesday 5/23 1-2:30

Weds 5/24 11-12:30

Friday 5/26 12-5

Thanks

Richard

Personal Matters / Ex. 6

Title VI OAB update

BB

Brian Beveridge <brian.woeip@gmail.com>

Reply all |

Today, 8:09 PM

Grow, Richard;

David Vintze <DVintze@baaqmd.gov>;

Marvin, Cynthia@ARB <cynthia.marvin@arb.ca.gov>;

Lee, Anna, Public Health, CAPE <Anna.Lee@acgov.org>;

+2 more

Richard

We are pretty unclear about how these agency meetings with the city are going. We would like to have a conference call with all our collaboration partners and get picture of what the future looks like regarding the Oakland logistics center mitigations and transition to the 21st Century.

Back in Dec, and again in Jan, there seemed to be some strong intentions on the part of the agencies to develop a unified goal statement to inspire the city and port to greater action. Here at WOEIP we're not sure where this intentions went. Could you take the task of coordinating a phone call with our WOTRC partners so that we can all get up to speed before the next city meeting on the 30th.

Please call me if you need more clarity.

Thanks, Brian

From: Grow, Richard

Sent: Wednesday, May 17, 2017 8:13 AM

To: Margaret Gordon; Brian Beveridge

Cc: Marvin, Cynthia@ARB; Yura, Elizabeth@ARB; David Vintze; Alison Kirk; 'Lee, Anna, Public Health, CAPE'

Subject: Agency documents on OAB/Port mitigation

Ms. Margaret and Brian

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Richard

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 1/10/2018 9:56:30 PM
To: Zimpfer, Amy [Zimpfer.Amy@epa.gov]; Valentine, Stephanie [Valentine.Stephanie@epa.gov]
Subject: RE: Following up RSinkoff email: Scheduling a Port MAQIP Interview-AZimpfer

Great, see you at 3 in 18323, pretty jammed until then but can talk tomorrow if needed. Mike and Stephanie will join, Penny McD accepted, Francisco by phone.

From: Zimpfer, Amy
Sent: Wednesday, January 10, 2018 1:42 PM
To: Valentine, Stephanie <Valentine.Stephanie@epa.gov>; Grow, Richard <Grow.Richard@epa.gov>
Subject: FW: Following up RSinkoff email: Scheduling a Port MAQIP Interview-AZimpfer

I would like to connect directly with you Stephanie, ok?

From: Meredith Cowart [<mailto:meredith@concurinc.net>]
Sent: Tuesday, January 09, 2018 3:58 PM
To: Zimpfer, Amy <Zimpfer.Amy@epa.gov>
Cc: Scott McCreary <scott@concurinc.net>
Subject: Re: Following up RSinkoff email: Scheduling a Port MAQIP Interview-AZimpfer

Dear Amy,

We are writing to confirm that you have received the Port of Oakland's invitation to engage in the MAQIP process, and for an interview with CONCUR in the next few days. Our updated availability is as follows:

Wed Jan 10
10:00a - 1:00p
2:00p - 3:30p
4:00p - 4:30p

Thurs Jan 11
8:30a - 10:30a
11:30a - 1:00p
2:00p - 4:30p

Fri Jan 12
8:30a - 10:00a
11:00a - 3:15p
4:00p - 4:30p

Please let us know when you are available for an interview. If you do not plan to participate in the MAQIP process, please advise whom we might contact as your successor.

We look forward to speaking with you.

Regards

Meredith Cowart and Scott McCreary

On Fri, Jan 5, 2018 at 10:26 AM, Scott McCreary <scott@concurinc.net> wrote:

Dear Amy,

Following up on the Port of Oakland's January 4, 2018, email, we are contacting you to schedule a brief interview for the MAQIP Update Task Force. We hope to cover the following:

- 1) Your background and interests as they relate to the MAQIP
- 2) Your involvement with past Port of Oakland air quality planning efforts
- 3) Goals of the MAQIP Update
- 4) Role of the MAQIP Task Force members
- 5) Meeting agenda topics

We will use the interviews to help plan the MAQIP Task Force meetings and agendas.

Attached please find the "MAQIP Update – Task Force Project Description", with background information and draft goals of the MAQIP Update Task Force. We expect that these draft goals may change, depending on what we learn in our interviews with you and other MAQIP Task Force Members.

We're looking at the following potential interview time windows.

Friday, Jan 5

- 3:30 pm

Monday Jan 8

- 8:30 to noon

- 3:30 to 5:30

Tuesday Jan 9

- 8:30 to 12:30

- 3:30 to 5:30

Wed Jan 10

- 8:30 to 11:30

- 2:30 to 5:30

Thurs Jan 11

- 8:30 to 5:30

Friday Jan 12

- 8:30 to 5:30

Please let us know which of these time windows will work for you.

We look forward to hearing your thoughts and input.

Regards,
Scott McCreary, Principal
Meredith Cowart, Associate

—
Scott McCreary, PhD
Principal
CONCUR, Inc.
1832 Second Street
Berkeley, CA 94710

(510) 649-8008 / 649-1980 (fax)
www.concurinc.com

--
Meredith Cowart
Associate
CONCUR, Inc
meredith@concurinc.net
www.concurinc.com
(510) 649-8008

Message

From: Grow, Richard [Grow.Richard@epa.gov]
Sent: 12/4/2017 9:06:11 PM
To: BANDROWSKI, MIKE [Bandrowski.Mike@epa.gov]
Subject: RE: Topic 5.d.: December 5 OTAQ/Region 9 Meeting Draft Discussion Topics

Thanks Mike, will do. Amy's questions are all well downstream of where we are right now on the civil rights complaint and worth talking about in a while, but not pertinent or timely going into tomorrow's discussions. I'm mainly hoping to spark some interest in the concept, one which has drawn a blank when I've raised it anywhere within EPA, yet has to be answered in some form to resolve the complaint, which will require the consideration of "feasible less discriminatory alternatives." I'm hoping we can answer that more usefully in the context of disproportionately impacted EJ communities than we have elsewhere.

From: BANDROWSKI, MIKE
Sent: Monday, December 4, 2017 10:18 AM
To: Grow, Richard
Subject: FW: Topic 5.d.: December 5 OTAQ/Region 9 Meeting Draft Discussion Topics

Richard- Let me know if you need help in setting up the meeting with Amy and others. If you do it, please include me. Thanks.

Mike Bandrowski | Manager, Office of Air Toxics, Radiation and Indoor Air
U.S. Environmental Protection Agency | Region 9| Air Division, Air-6 | 75 Hawthorne St |
San Francisco, CA 94105 |Tel 415.947-4194 | bandrowski.mike@epa.gov

-----Original Message-----

From: Zimpfer, Amy
Sent: Monday, December 04, 2017 10:01 AM
To: BANDROWSKI, MIKE <Bandrowski.Mike@epa.gov>; Machol, Ben <Machol.Ben@epa.gov>
Cc: Grow, Richard <Grow.Richard@epa.gov>
Subject: RE: Topic 5.d.: December 5 OTAQ/Region 9 Meeting Draft Discussion Topics

Richard,
Could you please set up time (30min?) to walk me through the "'best available" goods movement mitigation measures policy". I am interested in who would issue the policy, breadth of application (Oakland only? Bay Area only?), transferability to other areas etc. Please invite other folks working on ports from Ben's group.
Thanks,
Amy

-----Original Message-----

From: BANDROWSKI, MIKE
Sent: Monday, December 04, 2017 8:57 AM
To: Machol, Ben <Machol.Ben@epa.gov>; Zimpfer, Amy <Zimpfer.Amy@epa.gov>
Cc: Grow, Richard <Grow.Richard@epa.gov>
Subject: FW: Topic 5.d.: December 5 OTAQ/Region 9 Meeting Draft Discussion Topics

Amy and Ben- I know that the OTAQ agenda is tight, but is there time for Richard to discuss the Title VI issue at the Port?

Mike Bandrowski | Manager, Office of Air Toxics, Radiation and Indoor Air U.S. Environmental Protection Agency | Region 9| Air Division, Air-6 | 75 Hawthorne St | San Francisco, CA 94105 |Tel 415.947-4194 | bandrowski.mike@epa.gov

-----Original Message-----

From: Grow, Richard
Sent: Monday, December 04, 2017 7:19 AM
To: BANDROWSKI, MIKE <Bandrowski.Mike@epa.gov>; Davidson, Ken <Davidson.Ken@epa.gov>
Cc: Israels, Ken <Israels.Ken@epa.gov>
Subject: Topic 5.d.: December 5 OTAQ/Region 9 Meeting Draft Discussion Topics

Hi Mike, thanks for forwarding this.

If there is time under the Port of Oakland T6 issue, I'd like to discuss, very briefly, how resolution of the civil rights complaint has caused us to consider, and discuss with our partner agencies (CARB, BAAQMD), the need for what amounts to a "best available" goods movement mitigation measures policy. In discussions with our HQ civil rights office, and in the context of resolution discussions with the City and Port of Oakland, we have developed a rough framework for such a policy. However this ends up, the outcome will most likely be relevant to EJ GM communities elsewhere (most GM communities arguably are EJ communities). I'm copying Ken Israels as he has been involved in some of these discussions. If this doesn't fit in this format, I'd be glad to have a side discussion with OTAQ folks while they are here.

Richard

From: BANDROWSKI, MIKE
Sent: Friday, December 1, 2017 3:40 PM
To: Davidson, Ken; Grow, Richard
Subject: FW: December 5 OTAQ/Region 9 Meeting Draft Discussion Topics

FYI

Mike Bandrowski | Manager, Office of Air Toxics, Radiation and Indoor Air U.S. Environmental Protection Agency | Region 9 | Air Division, Air-6 | 75 Hawthorne St | San Francisco, CA 94105 | Tel 415.947-4194 | bandrowski.mike@epa.gov<<mailto:bandrowski.mike@epa.gov>>

From: Zimpfer, Amy
Sent: Friday, December 01, 2017 2:59 PM
To: Lakin, Matt <Lakin.Matthew@epa.gov>; Jordan, Deborah <Jordan.Deborah@epa.gov>
Cc: Lee, Anita <Lee.Anita@epa.gov>; Ungvarsky, John <Ungvarsky.John@epa.gov>; Lo, Doris <Lo.Doris@epa.gov>; Machol, Ben <Machol.Ben@epa.gov>; MIKULIN, JOHN <MIKULIN.JOHN@EPA.GOV>; Tax, Wienke <Tax.Wienke@epa.gov>; Donez, Francisco <Donez.Francisco@epa.gov>; Mayfield, Dana <mayfield.dana@epa.gov>; Zimpfer, Amy <Zimpfer.Amy@epa.gov>; Grow, Richard <Grow.Richard@epa.gov>; BANDROWSKI, MIKE <Bandrowski.Mike@epa.gov>; Gaudario, Abigail <Gaudario.Abigail@epa.gov>
Subject: December 5 OTAQ/Region 9 Meeting Draft Discussion Topics

Hi Deborah and Matt,

Attached please find a draft list of potential discussion topics for our December 5 meeting with OTAQ's Chris Grundler and Karl Simon. Karl and I agreed to an informal session, with discussion topics rather than a set agenda and formal presentations. They are expected to arrive sometime around 2:30pm. The meeting will be held in the Navajo Room. Here are the expected participants:

2:30pm-3:00pm	(approx.)	Chris, Karl, Deborah, Matt, Ben, Amy
3:00pm-4:00pm (approx.)	Same as above plus John Mikulin, Dana Mayfield, John Ungvarsky and via telephone, Francisco Donez and Karina O'Connor. We may have one or two additional staff.	

Please review the discussion topics and let me know if you have any comments. I will incorporate comments and send to Chris and Karl on Monday.

Thank you.

Amy

p.s. to Abi--can you please hold the Navajo Room until 4:30pm in case the meeting extends beyond 4pm?

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 5/30/2017 9:09:03 PM
To: Strauss, Alexis [Strauss.Alexis@epa.gov]
Subject: RE: Chat with Ken Alex: Update on City/Port/OAB, EPA and other fed involvement

I checked in with Abi and then asked Ken's office to set up a 30 minute phone chat on the 19th between 2 & 5. They'll send out an invite. I can narrow it down further if you'd like.

From: Strauss, Alexis
Sent: Tuesday, May 30, 2017 1:10 PM
To: Grow, Richard <Grow.Richard@epa.gov>
Subject: RE: Chat with Ken Alex: Update on City/Port/OAB, EPA and other fed involvement

Looking at the availability shown below, I'm in Saipan when Ken is available June 14 – 16, and here the following week. If you're going to Sacramento to meet with him, perhaps I could join by phone.

Alexis Strauss
Acting Regional Administrator
E.P.A. Region 9
75 Hawthorne Street
San Francisco, CA 94105
415-972-3572

From: Grow, Richard
Sent: Tuesday, May 30, 2017 10:08 AM
To: Strauss, Alexis <Strauss.Alexis@epa.gov>
Subject: Chat with Ken Alex: Update on City/Port/OAB, EPA and other fed involvement

Alexis

I'm planning to speak with Ken Alex (OPR chief in Gov's office) to get his take on what he learned from his 5/17 meeting with the City and CARB, what he sees going forward, his role etc. Before sending the note below to his scheduler I wanted to check to see if you wanted to join the conversation, in which case I would work around your schedule.

Richard

Anthony – Plenty prompt enough for me, but thank you. What I'm looking for is a 30 minute (max) phone call, though I'd be glad to meet him in Oakland if that would be more useful. Below is my current **availability**, and I'll defer to your discretion to select the most convenient time for Ken. Thanks

Richard

From: Anthony Franzoia [<mailto:Anthony.Franzoia@GOV.CA.GOV>]
Sent: Tuesday, May 30, 2017 9:55 AM
To: Grow, Richard <Grow.Richard@epa.gov>
Subject: RE: Update on City/Port/OAB, EPA and other fed involvement

Good morning Mr. Grow,

Sorry for the slow response. Looking at dates when Ken returns, here are some good options:

6/14: 11:30 – 5:00 (Oakland) **I'm available any of those times**

6/15: 10:00 – 12:00 (Sacramento) **Available all**

6/16: 11:30 – 2:00, 3:30 – 4:00 (Oakland) **11:30-12:00 only**

6/19: 2:30 – 4:30 (Sacramento) **All good**

6/20: 1:00 – 4:00 (Sacramento) **All good**

Let me what looks good on your end. And please feel free to loop in your assistant/scheduler. Thanks!

Anthony Franzoia

Executive Assistant to the Director of Operations

Office of Governor Edmund G. Brown Jr.

(916)445-1682

From: Ken Alex

Sent: Tuesday, May 23, 2017 12:04 PM

To: 'Grow, Richard'

Cc: Anthony Franzoia

Subject: RE: Update on City/Port/OAB, EPA and other fed involvement

Thanks Richard. Adding Anthony to schedule for after my return. ken

From: Grow, Richard [<mailto:Grow.Richard@epa.gov>]

Sent: Tuesday, May 23, 2017 10:49 AM

To: Ken Alex

Subject: Update on City/Port/OAB, EPA and other fed involvement

Ken Alex

Following up on our brief chat, I'm hoping we can talk once you are back in the office. I'm sending this note to try to get that scheduled. There have been several developments at the federal level since you convened the parties a couple years back. I think several parties, including the community representatives, are hopeful that discussions can be put on a more productive footing, and it would be good for my office to get your perspective on possibilities for moving ahead.

Thanks

Richard Grow

US EPA

Region 9

(415) 947-4104

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 1/4/2018 7:37:18 PM
To: Fitzpatrick, Ryan (OST) [ryan.fitzpatrick@dot.gov]
Subject: RE: WOEIP position on Port air plan update process

Agreed. Supporting community participation with stipends and/or technical support has been a basic EJ principle for some time, however rarely supported by agencies, though we (EPA) formalize it sometimes in supporting Superfund or Brownfields work. I think as the community they felt they needed to insist on implementation of their recommendations, but what you have described would be a huge step forward and would be well appreciated if it was fully documented, transparent etc with some clear rights of appeal, though I'm not sure what that would look like.

From: Fitzpatrick, Ryan (OST) [mailto:ryan.fitzpatrick@dot.gov]
Sent: Thursday, January 04, 2018 11:29 AM
To: Grow, Richard <Grow.Richard@epa.gov>
Subject: RE: WOEIP position on Port air plan update process

It's pretty bold, particularly the idea that they should be paid for participating in a public engagement activity. If that were something local agencies were required to do, I'd imagine it would have a chilling effect on public engagement activities. Same with the demand that community input be implemented. Public engagement is meaningful when community input is meaningfully and demonstrably considered, and implemented when it makes sense to do so, but to say that it MUST be implemented when proffered is impractical.

But thanks for sharing, it keeps us abreast of the current goings-ons over there. Curious to see how the Port responds to it.

Ryan N. Fitzpatrick, Esq.
Lead Civil Rights Analyst
Departmental Office of Civil Rights
Office of the Secretary
U.S. Department of Transportation
(202) 366-1583

From: Grow, Richard [mailto:Grow.Richard@epa.gov]
Sent: Thursday, January 04, 2018 2:17 PM
To: Fitzpatrick, Ryan (OST) <ryan.fitzpatrick@dot.gov>
Subject: RE: WOEIP position on Port air plan update process

Yes, though a few of us saw it during its development. It hasn't been presented to the Port yet and probably won't be until Monday. To develop the document they excavated the many many working notes from our last MAQIP go'round in 2008-9, including a "social justice caucus" convened by Ms. Margaret back at the time which included the Pacific Institute.

From: Fitzpatrick, Ryan (OST) [mailto:ryan.fitzpatrick@dot.gov]
Sent: Thursday, January 04, 2018 11:12 AM
To: Grow, Richard <Grow.Richard@epa.gov>; Temple, Kurt <Temple.Kurt@epa.gov>
Subject: RE: WOEIP position on Port air plan update process

Richard was that WOEIP position document drafted by them?

Ryan N. Fitzpatrick, Esq.
Lead Civil Rights Analyst

Departmental Office of Civil Rights
Office of the Secretary
U.S. Department of Transportation
(202) 366-1583

From: Grow, Richard [mailto:Grow.Richard@epa.gov]

Sent: Thursday, January 04, 2018 10:47 AM

To: Temple, Kurt <Temple.Kurt@epa.gov>; Fitzpatrick, Ryan (OST) <ryan.fitzpatrick@dot.gov>

Subject: FYI: WOEIP position on Port air plan update process

Kurt & Ryan – brief update on Port initiation of update process for it's a.q. plan

The Port is in the process of reconvening a “task force” to update its 2009 “Maritime Air Quality Improvement Plan” (MAQIP), that plan having come out of a process that many of us, including an “Interagency Workgroup” in which we (EPA, ARB, BAAQMD and County Health) participated found quite frustrating and unproductive. That dissatisfaction was documented in several pieces of correspondence. The Port has retained the same contractor/facilitator as last time, CONCUR, who have requested meetings with WOEIP in prep for the reconvening. All of this is preface to my forwarding the WOEIP's current draft list of conditions (“engagement criteria”) for their participation.

I'm also attaching a report critically evaluating that MAQIP process authored by Viveka Chen. This report was contracted by the Port. Viveka was also a most excellent facilitator of the founding and operation of the West Oakland Toxics Reduction Collaborative (WOTRC) from 2005-2009. Among the WOEIP conditions for participating in the task force is to review and address the concerns raised in the report. Frankly there is no comparison between the quality of the facilitation provided by Viveka and CONCUR, and if we (feds) were to consider retaining a consultant or facilitator for moving forward on the issues facing us, she would be at the top of my list of recommendations.

Richard

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 5/30/2017 7:14:55 PM
To: Anthony Franzoia [Anthony.Franzoia@GOV.CA.GOV]
CC: Gaudario, Abigail [Gaudario.Abigail@epa.gov]
Subject: RE: Update on City/Port/OAB, EPA and other fed involvement

Anthony

Thank you for getting back to me, I don't think we've lost any time. I'd like to include our Acting Regional Administrator, Alexis Strauss, on the call, she and Ken know each other from other areas of work. That said, the time that work best for us would be the afternoon of June 19, any 30 minute time slot between 2 and 5 pm.

Abigail Gaudario manages Alexis' schedule and I am copying her on this email so that you can include her in any invitations you send out. Alexis's email is strauss.alexis@epa.gov.

Richard

From: Anthony Franzoia [mailto:Anthony.Franzoia@GOV.CA.GOV]
Sent: Tuesday, May 30, 2017 9:55 AM
To: Grow, Richard <Grow.Richard@epa.gov>
Subject: RE: Update on City/Port/OAB, EPA and other fed involvement

Good morning Mr. Grow,

Sorry for the slow response. Looking at dates when Ken returns, here are some good options:

6/14: 11:30 – 5:00 (Oakland)
6/15: 10:00 – 12:00 (Sacramento)
6/16: 11:30 – 2:00, 3:30 – 4:00 (Oakland)
6/19: 2:30 – 4:30 (Sacramento)
6/20: 1:00 – 4:00 (Sacramento)

Let me what looks good on your end. And please feel free to loop in your assistant/scheduler. Thanks!

Anthony Franzoia

Executive Assistant to the Director of Operations
Office of Governor Edmund G. Brown Jr.
(916)445-1682

From: Ken Alex
Sent: Tuesday, May 23, 2017 12:04 PM
To: 'Grow, Richard'
Cc: Anthony Franzoia
Subject: RE: Update on City/Port/OAB, EPA and other fed involvement

Thanks Richard. Adding Anthony to schedule for after my return. ken

From: Grow, Richard [mailto:Grow.Richard@epa.gov]
Sent: Tuesday, May 23, 2017 10:49 AM
To: Ken Alex
Subject: Update on City/Port/OAB, EPA and other fed involvement

Ken Alex

Following up on our brief chat, I'm hoping we can talk once you are back in the office. I'm sending this note to try to get that scheduled. There have been several developments at the federal level since you convened the parties a couple years back. I think several parties, including the community representatives, are hopeful that discussions can be put on a more productive footing, and it would be good for my office to get your perspective on possibilities for moving ahead.

Thanks

Richard Grow
US EPA
Region 9
(415) 947-4104

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 5/30/2017 5:22:56 PM
To: Gaudario, Abigail [Gaudario.Abigail@epa.gov]
Subject: Scheduling Alexis call: Chat with Ken Alex:

Abi – per my exchange with Alexis below, could you let me know which times within those **highlighted** below would be good for me to get back to Ken Alex at the State ? Pls don't send out an invite, but if you could give me 2-3 options I'll tie them down with his office. Thanks

Richard
7-4104

From: Strauss, Alexis
Sent: Tuesday, May 30, 2017 10:11 AM
To: Grow, Richard <Grow.Richard@epa.gov>
Subject: RE: Chat with Ken Alex:

Richard,
I've enjoyed working with Ken and would be glad to join you on this call.
Alexis

Alexis Strauss
Acting Regional Administrator
E.P.A. Region 9
75 Hawthorne Street
San Francisco, CA 94105
415-972-3572

From: Grow, Richard
Sent: Tuesday, May 30, 2017 10:08 AM
To: Strauss, Alexis <Strauss.Alexis@epa.gov>
Subject: Chat with Ken Alex: Update on City/Port/OAB, EPA and other fed involvement

Alexis

I'm planning to speak with Ken Alex (OPR chief in Gov's office) to get his take on what he learned from his 5/17 meeting with the City and CARB, what he sees going forward, his role etc. Before sending the note below to his scheduler I wanted to check to see if you wanted to join the conversation, in which case I would work around your schedule.

Richard

From: Anthony Franzoia [mailto:Anthony.Franzoia@GOV.CA.GOV]
Sent: Tuesday, May 30, 2017 9:55 AM
To: Grow, Richard <Grow.Richard@epa.gov>
Subject: RE: Update on City/Port/OAB, EPA and other fed involvement

Good morning Mr. Grow,

Sorry for the slow response. Looking at dates when Ken returns, here are some good options:

6/14: 11:30 – 5:00 (Oakland) **Available any of those times**
6/15: 10:00 – 12:00 (Sacramento) **Available all**
6/16: 11:30 – 2:00, 3:30 – 4:00 (Oakland) **11:30-12:00 only**
6/19: 2:30 – 4:30 (Sacramento) **All good**
6/20: 1:00 – 4:00 (Sacramento) **All good**

Let me what looks good on your end. And please feel free to loop in your assistant/scheduler. Thanks!

Anthony Franzoia

Executive Assistant to the Director of Operations
Office of Governor Edmund G. Brown Jr.
(916)445-1682

From: Ken Alex
Sent: Tuesday, May 23, 2017 12:04 PM
To: 'Grow, Richard'
Cc: Anthony Franzoia
Subject: RE: Update on City/Port/OAB, EPA and other fed involvement

Thanks Richard. Adding Anthony to schedule for after my return. ken

From: Grow, Richard [<mailto:Grow.Richard@epa.gov>]
Sent: Tuesday, May 23, 2017 10:49 AM
To: Ken Alex
Subject: Update on City/Port/OAB, EPA and other fed involvement

Ken Alex

Following up on our brief chat, I'm hoping we can talk once you are back in the office. I'm sending this note to try to get that scheduled. There have been several developments at the federal level since you convened the parties a couple years back. I think several parties, including the community representatives, are hopeful that discussions can be put on a more productive footing, and it would be good for my office to get your perspective on possibilities for moving ahead.

Thanks

Richard Grow
US EPA
Region 9
(415) 947-4104

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 1/10/2018 8:47:15 PM
To: Cynthia Marvin [cynthia.marvin@arb.ca.gov]; Elizabeth Yura [elizabeth.yura@arb.ca.gov]
Subject: MAQIP docs
Attachments: Engagement Criteria EIP Jan2018.docx; MAQIP Update Proj Description Working Draft Dec15.pdf

Two docs, (1) EIP conditions presented to RSinkoff 1/8/18; (2) CONCUR project write-up 12/15/17. Best info at this point is that Port/CONCUR aiming for kick-off on Jan 25 or 26th. EIP asked Sinkoff for response within week. Jack B. supportive of IWG talk before any convening. RG

Project Description – Dec 15 Working Draft

Port of Oakland Maritime Air Quality Improvement Plan Update-Task Force

The Port plans to reconvene the Maritime Air Quality Task Force (Task Force) for its 2018 MAQIP Update. This will follow up on the Task Force work in 2007 and the November 2013 Progress Report Meeting. The Task Force will work closely with the Port of Oakland's staff and technical consultants to review the Ports' strategies, compliance success and progress to date, and to make recommendations on forward-looking strategies towards fulfillment of the 2020 MAQIP goals and beyond in light of the current regulatory setting.

The Task Force will be re-convened by the Environmental Programs & Planning Department of the Port of Oakland. Task Force meetings will be open to the public and will provide a structure for observers to submit comments. Meetings will be agenda-driven and the primary deliberations will be among the Task Force members. Facilitation will be provided by CONCUR Inc., a neutral non-partisan environmental mediation firm based in the East Bay.

Charge of the Task Force

The Task Force will be asked to develop recommendations to the Port Board of Commissioners on the project-level commitments to be made by the Port towards its 2020 energy goals. Like other steps in the MAQIP process, this is consistent with the approach of a consultative planning process. Comments and advice voiced by the Task Force will be documented and provided to the Board of Port Commissioners.

The Task Force will provide a forum to:

- Build shared knowledge of Port Maritime emissions and changes to the regional air quality setting since 2015;
- Inform participants on progress, strategies, compliance success and new technologies to support MAQIP Diesel Particulate Matter (DPM) and criteria air pollutants goals;
- Identify emissions reduction measures which are commercially available, feasible and cost effective;
- Discuss technology options, partnerships and grant funding opportunities and considerations in support of Year 2020 goals and beyond (i.e., to year 2030);

- Provide input to the Port on criteria and elements of the proposed Advanced Technology Program (“ATP”) to promote State of California Year 2030 GHG reduction goals;
- Discuss and build support for recommended measures for consideration by the Board of Port Commissioners in early Summer 2018.

Impetus for the MAQIP Update Task Force

The MAQIP states that the Port will reconvene the MAQIP Task Force or a successor group “in about ten years, about two years before the 2020 planning horizon, for another review of progress, strategies, compliance success and new technologies.” (11.3, p. 114)

Consistent with this guidance, the Port is reconvening the MAQIP Task Force to provide feedback on the Port’s project-level commitments to identify emissions reduction measures and foster advanced technology to further DPM and GHG emissions reductions. The focus of stakeholder involvement at this stage is at the Master Plan level, to ensure that the design of specific programs is consistent with the planning guidance of the MAQIP.

Task Force Membership and Structure

The Task Force will meet in two or three half-day meetings in January - April 2018. Following the first meeting, it will be determined whether one or two additional meetings are needed. Meeting deliberations will be recorded in key outcomes memoranda and recommendations will be forwarded by Port staff to the Board of Port Commissioners.

Task Force membership will be the original MAQIP Task Force membership, and will include appropriate successors to the original members and any additional stakeholders as applicable. Members will represent: customers (maritime tenants and other maritime related businesses), government (regulatory, policymakers and interagency) and community (residential, environmental advocacy, local business and other special interest groups), and any additional stakeholders as applicable. The groups should represent a comprehensive stakeholder forum where the Port can effectively inform its community and engage with its multiple stakeholders on Port Maritime projects.

Criteria for Task Force Member Selection

The Task Force will be structured to include balanced representation of public agency, labor, business, neighborhood, and conservation interests.

Individual members of the Task Force will be recruited based on these attributes:

- Currently working in the Port of Oakland's Maritime Operations area or residing or working in West Oakland (defined geographically as the "3-freeway area" bounded by 880, 980 and 580). Individuals from non-profits, government agencies, businesses, churches, and private organizations that conduct their work in West Oakland but are not based in West Oakland will also be considered.
- Able to bring first-hand knowledge and perspective to bear on Port of Oakland Maritime Air Quality Planning.
- Able to consider local air quality near the Port of Oakland Maritime operations in the context of the broader regulatory framework and goods movement system.
- Willing to express fundamental interests (as opposed to fixed positions) and to clearly convey the interests of one or more stakeholder groups.
- Capable of working collaboratively, seeking to integrate the interests of a broad range of constituencies.
- Committed to completing all aspects of the charge of the Task Force
- Able to meet at mutually convenient times.

The MAQIP Update will be composed to achieve a diversity of stakeholder perspectives, expertise and direct experience related to the Port's maritime emissions.

Background

In March 2008, the Port of Oakland committed to achieving an 85% reduction in seaport-related diesel health risk by 2020 from a 2005 baseline. To support this goal, the Port developed the MAQIP through a comprehensive public stakeholder participation process led by Port staff with the assistance of CONCUR, Inc. a Berkeley-based consultancy skilled in facilitating complex environmental agreements and plans. The original MAQIP Task Force of 35 stakeholders represented community members, Port tenants, environmental advocacy groups, air quality and health agencies, and maritime-related businesses. The MAQIP planning process was consultative in nature. The MAQIP represents a twelve-year emissions reduction framework (from Year 2009 through the Year 2020) focused on improving public health in West Oakland.

A key tool to track implementation of the MAQIP is the seaport emissions inventory. As a baseline, the Port prepared a comprehensive inventory of pollutant emissions from Port-related ships, harbor craft, cargo-handling equipment, trucks and locomotives in 2005. As new emissions control technologies are introduced in response to regulations and other initiatives taken by the Port, Port business

partners, or other groups, the Port has tracked the resulting emissions reductions with respect to the MAQIP goals through quantitative updates to the baseline emissions inventory.

In 2013, the Port convened a MAQIP Progress Report Meeting to fulfill its commitment to report out on MAQIP implementation progress and to compare the results to the 2012 interim goals and to review likely progress toward the 2020 goals. In this meeting, we reported that we were meeting our air quality commitment, implementing projects, and making better-than-expected progress in achieving the MAQIP goals set in 2009. Key improvements were implemented via the Comprehensive Truck Management Program (CTMP), terminal improvements to create greater efficiency, and the Shore Power Program.

The 2015 Emissions Inventory Update indicated that the Port was on track to meet the clean air commitment the Port made in 2008. Total seaport Diesel Particulate Matter (DPM) emissions are down by -76% with cargo-handling equipment down by -82%, ocean going vessel emissions down by -75% and drayage truck emissions down by -98%. This progress is significant; however, there remains important work ahead to achieve the -85% goal.

Message

From: Grow, Richard [Grow.Richard@epa.gov]
Sent: 12/4/2017 8:05:19 PM
To: Israels, Ken [Israels.Ken@epa.gov]
Subject: FYI: Topic 5.d.: December 5 OTAQ/Region 9 Meeting Draft Discussion Topics

From: Zimpfer, Amy
Sent: Monday, December 4, 2017 10:01 AM
To: BANDROWSKI, MIKE; Machol, Ben
Cc: Grow, Richard
Subject: RE: Topic 5.d.: December 5 OTAQ/Region 9 Meeting Draft Discussion Topics

Richard,
Could you please set up time (30min?) to walk me through the "'best available" goods movement mitigation measures policy". I am interested in who would issue the policy, breadth of application (Oakland only? Bay Area only?), transferability to other areas etc. Please invite other folks working on ports from Ben's group.
Thanks,
Amy

-----Original Message-----

From: BANDROWSKI, MIKE
Sent: Monday, December 04, 2017 8:57 AM
To: Machol, Ben <Machol.Ben@epa.gov>; Zimpfer, Amy <Zimpfer.Amy@epa.gov>
Cc: Grow, Richard <Grow.Richard@epa.gov>
Subject: FW: Topic 5.d.: December 5 OTAQ/Region 9 Meeting Draft Discussion Topics

Amy and Ben- I know that the OTAQ agenda is tight, but is there time for Richard to discuss the Title VI issue at the Port?

Mike Bandrowski | Manager, Office of Air Toxics, Radiation and Indoor Air U.S. Environmental Protection Agency | Region 9| Air Division, Air-6 | 75 Hawthorne St | San Francisco, CA 94105 |Tel 415.947-4194 | bandrowski.mike@epa.gov

-----Original Message-----

From: Grow, Richard
Sent: Monday, December 04, 2017 7:19 AM
To: BANDROWSKI, MIKE <Bandrowski.Mike@epa.gov>; Davidson, Ken <Davidson.Ken@epa.gov>
Cc: Israels, Ken <Israels.Ken@epa.gov>
Subject: Topic 5.d.: December 5 OTAQ/Region 9 Meeting Draft Discussion Topics

Hi Mike, thanks for forwarding this.

If there is time under the Port of Oakland T6 issue, I'd like to discuss, very briefly, how resolution of the civil rights complaint has caused us to consider, and discuss with our partner agencies (CARB, BAAQMD), the need for what amounts to a "best available" goods movement mitigation measures policy. In discussions with our HQ civil rights office, and in the context of resolution discussions with the City and Port of Oakland, we have developed a rough framework for such a policy. However this ends up, the outcome will most likely be relevant to EJ GM communities elsewhere (most GM communities arguably are EJ communities). I'm copying Ken Israels as he has been involved in some of these discussions. If this doesn't fit in this format, I'd be glad to have a side discussion with OTAQ folks while they are here.

Richard

From: BANDROWSKI, MIKE
Sent: Friday, December 1, 2017 3:40 PM
To: Davidson, Ken; Grow, Richard
Subject: FW: December 5 OTAQ/Region 9 Meeting Draft Discussion Topics

FYI

Mike Bandrowski | Manager, Office of Air Toxics, Radiation and Indoor Air U.S. Environmental Protection Agency | Region 9| Air Division, Air-6 | 75 Hawthorne St | San Francisco, CA 94105 |Tel 415.947-4194 | bandrowski.mike@epa.gov<mailto:bandrowski.mike@epa.gov>

From: Zimpfer, Amy
Sent: Friday, December 01, 2017 2:59 PM
To: Lakin, Matt <Lakin.Matthew@epa.gov>; Jordan, Deborah <Jordan.Deborah@epa.gov>
Cc: Lee, Anita <Lee.Anita@epa.gov>; Ungvarsky, John <Ungvarsky.John@epa.gov>; Lo, Doris <Lo.Doris@epa.gov>; Machol, Ben <Machol.Ben@epa.gov>; MIKULIN, JOHN <MIKULIN.JOHN@EPA.GOV>; Tax, Wienke

003442 2020-10-29

<Tax.Wienke@epa.gov>; Donez, Francisco <Donez.Francisco@epa.gov>; Mayfield, Dana <mayfield.dana@epa.gov>; Zimpfer, Amy <Zimpfer.Amy@epa.gov>; Grow, Richard <Grow.Richard@epa.gov>; BANDROWSKI, MIKE <Bandrowski.Mike@epa.gov>; Gaudario, Abigail <Gaudario.Abigail@epa.gov>
Subject: December 5 OTAQ/Region 9 Meeting Draft Discussion Topics

Hi Deborah and Matt,

Attached please find a draft list of potential discussion topics for our December 5 meeting with OTAQ's Chris Grundler and Karl Simon. Karl and I agreed to an informal session, with discussion topics rather than a set agenda and formal presentations. They are expected to arrive sometime around 2:30pm. The meeting will be held in the Navajo Room. Here are the expected participants:

2:30pm-3:00pm (approx.) Chris, Karl, Deborah, Matt, Ben, Amy
3:00pm-4:00pm (approx.) Same as above plus John Mikulin, Dana Mayfield, John Ungvasky and via telephone, Francisco Donez and Karina O'Connor. We may have one or two additional staff.

Please review the discussion topics and let me know if you have any comments. I will incorporate comments and send to Chris and Karl on Monday.

Thank you.

Amy

p.s. to Abi—can you please hold the Navajo Room until 4:30pm in case the meeting extends beyond 4pm?

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 5/30/2017 5:08:12 PM
To: Strauss, Alexis [Strauss.Alexis@epa.gov]
Subject: Chat with Ken Alex: Update on City/Port/OAB, EPA and other fed involvement

Alexis

I'm planning to speak with Ken Alex (OPR chief in Gov's office) to get his take on what he learned from his 5/17 meeting with the City and CARB, what he sees going forward, his role etc. Before sending the note below to his scheduler I wanted to check to see if you wanted to join the conversation, in which case I would work around your schedule.

Richard

Anthony – Plenty prompt enough for me, but thank you. What I'm looking for is a 30 minute (max) phone call, though I'd be glad to meet him in Oakland if that would be more useful. Below is my current **availability**, and I'll defer to your discretion to select the most convenient time for Ken. Thanks

Richard

From: Anthony Franzoia [mailto:Anthony.Franzoia@GOV.CA.GOV]
Sent: Tuesday, May 30, 2017 9:55 AM
To: Grow, Richard <Grow.Richard@epa.gov>
Subject: RE: Update on City/Port/OAB, EPA and other fed involvement

Good morning Mr. Grow,

Sorry for the slow response. Looking at dates when Ken returns, here are some good options:

6/14: 11:30 – 5:00 (Oakland) **I'm available any of those times**

6/15: 10:00 – 12:00 (Sacramento) **Available all**

6/16: 11:30 – 2:00, 3:30 – 4:00 (Oakland) **11:30-12:00 only**

6/19: 2:30 – 4:30 (Sacramento) **All good**

6/20: 1:00 – 4:00 (Sacramento) **All good**

Let me what looks good on your end. And please feel free to loop in your assistant/scheduler. Thanks!

Anthony Franzoia

Executive Assistant to the Director of Operations
Office of Governor Edmund G. Brown Jr.
(916)445-1682

From: Ken Alex
Sent: Tuesday, May 23, 2017 12:04 PM
To: 'Grow, Richard'
Cc: Anthony Franzoia
Subject: RE: Update on City/Port/OAB, EPA and other fed involvement

Thanks Richard. Adding Anthony to schedule for after my return. ken

From: Grow, Richard [<mailto:Grow.Richard@epa.gov>]
Sent: Tuesday, May 23, 2017 10:49 AM
To: Ken Alex
Subject: Update on City/Port/OAB, EPA and other fed involvement

Ken Alex

Following up on our brief chat, I'm hoping we can talk once you are back in the office. I'm sending this note to try to get that scheduled. There have been several developments at the federal level since you convened the parties a couple years back. I think several parties, including the community representatives, are hopeful that discussions can be put on a more productive footing, and it would be good for my office to get your perspective on possibilities for moving ahead.

Thanks

Richard Grow
US EPA
Region 9
(415) 947-4104

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 1/4/2018 7:16:38 PM
To: Fitzpatrick, Ryan (OST) [ryan.fitzpatrick@dot.gov]
Subject: RE: WOEIP position on Port air plan update process

Yes, though a few of us saw it during its development. It hasn't been presented to the Port yet and probably won't be until Monday. To develop the document they excavated the many many working notes from our last MAQIP go'round in 2008-9, including a "social justice caucus" convened by Ms. Margaret back at the time which included the Pacific Institute.

From: Fitzpatrick, Ryan (OST) [mailto:ryan.fitzpatrick@dot.gov]
Sent: Thursday, January 04, 2018 11:12 AM
To: Grow, Richard <Grow.Richard@epa.gov>; Temple, Kurt <Temple.Kurt@epa.gov>
Subject: RE: WOEIP position on Port air plan update process

Richard was that WOEIP position document drafted by them?

Ryan N. Fitzpatrick, Esq.
Lead Civil Rights Analyst
Departmental Office of Civil Rights
Office of the Secretary
U.S. Department of Transportation
(202) 366-1583

From: Grow, Richard [mailto:Grow.Richard@epa.gov]
Sent: Thursday, January 04, 2018 10:47 AM
To: Temple, Kurt <Temple.Kurt@epa.gov>; Fitzpatrick, Ryan (OST) <ryan.fitzpatrick@dot.gov>
Subject: FYI: WOEIP position on Port air plan update process

Kurt & Ryan – brief update on Port initiation of update process for it's a.q. plan

The Port is in the process of reconvening a "task force" to update its 2009 "Maritime Air Quality Improvement Plan" (MAQIP), that plan having come out of a process that many of us, including an "Interagency Workgroup" in which we (EPA, ARB, BAAQMD and County Health) participated found quite frustrating and unproductive. That dissatisfaction was documented in several pieces of correspondence. The Port has retained the same contractor/facilitator as last time, CONCUR, who have requested meetings with WOEIP in prep for the reconvening. All of this is preface to my forwarding the WOEIP's current draft list of conditions ("engagement criteria") for their participation.

I'm also attaching a report critically evaluating that MAQIP process authored by Viveka Chen. This report was contracted by the Port. Viveka was also a most excellent facilitator of the founding and operation of the West Oakland Toxics Reduction Collaborative (WOTRC) from 2005-2009. Among the WOEIP conditions for participating in the task force is to review and address the concerns raised in the report. Frankly there is no comparison between the quality of the facilitation provided by Viveka and CONCUR, and if we (feds) were to consider retaining a consultant or facilitator for moving forward on the issues facing us, she would be at the top of my list of recommendations.

Richard

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 5/30/2017 4:30:55 PM
To: Margaret Gordon [margaret.woeip@gmail.com]
CC: Brian Beveridge [brian.woeip@gmail.com]; Marvin, Cynthia@ARB [cynthia.marvin@arb.ca.gov]; Yura, Elizabeth@ARB [eyura@arb.ca.gov]; David Vintze [DVintze@baaqmd.gov]; Alison Kirk [AKirk@baaqmd.gov]; anna.lee@acgov.org
Subject: RE: REMINDER: Wednesday May 31, 1-2pm for OAB update call/meeting

Ms. Margaret - May I join you and Brian at your office for the call ?

Richard

From: Margaret Gordon [mailto:margaret.woeip@gmail.com]
Sent: Tuesday, May 30, 2017 9:13 AM
To: Grow, Richard <Grow.Richard@epa.gov>
Cc: Brian Beveridge <brian.woeip@gmail.com>; Marvin, Cynthia@ARB <cynthia.marvin@arb.ca.gov>; Yura, Elizabeth@ARB <eyura@arb.ca.gov>; David Vintze <DVintze@baaqmd.gov>; Alison Kirk <AKirk@baaqmd.gov>; anna.lee@acgov.org
Subject: Re: REMINDER: Wednesday May 31, 1-2pm for OAB update call/meeting

Thank Richard,

Looking forward to the meeting.

Ms.M

On Tue, May 30, 2017 at 9:11 AM, Grow, Richard <Grow.Richard@epa.gov> wrote:

Call in number is **Conference Line/Code / Ex. 6** Wednesday, May 31, 1-2 pm. Please review the email chain below for the context and need for this call. Thank you.

Richard

Office: (415) 947-4104

Personal Matters / Ex. 6

From: Grow, Richard
Sent: Thursday, May 18, 2017 1:35 PM
To: 'Brian Beveridge' <brian.woeip@gmail.com>; 'Margaret Gordon' <margaret.woeip@gmail.com>; 'Marvin, Cynthia@ARB' <cynthia.marvin@arb.ca.gov>; 'Yura, Elizabeth@ARB' <eyura@arb.ca.gov>; 'David Vintze' <DVintze@baaqmd.gov>; 'Alison Kirk' <AKirk@baaqmd.gov>; 'anna.lee@acgov.org' <anna.lee@acgov.org>
Subject: Confirming Wednesday May 31, 1-2pm for OAB update call/meeting

003447 2020-10-29

Looks like our best bet is Wednesday, May 31 from 1-2 pm. Please protect that time slot and I'll tie down a conference room and location for those who want to gather together. This will be the day after the City's second meeting with the agencies so we may know more about the City's approach by then. Thanks

Richard

From: Grow, Richard

Sent: Thursday, May 18, 2017 12:12 PM

To: Brian Beveridge <brian.woeip@gmail.com>; Margaret Gordon <margaret.woeip@gmail.com>; Marvin, Cynthia@ARB <cynthia.marvin@arb.ca.gov>; Yura, Elizabeth@ARB <eyura@arb.ca.gov>; David Vintze <DVintze@baaqmd.gov>; Alison Kirk <AKirk@baaqmd.gov>; anna.lee@acgov.org

Subject: Week of May 30: RSVP Date check: OAB update call/meeting

All

OK, from the replies I see we're trying to thread the needle and are missing several principals. This discussion is not only an update but a basic check on alignments going forward, so we need full participation. The City's May 30 meeting (2-3:30) is only the second of three. Dave V. should be back in the office by the week of May 30, hopefully Cynthia. How do your calendars look Weds – Friday, May 31 – June 2 ?

Richard

From: Grow, Richard

Sent: Wednesday, May 17, 2017 8:47 PM

To: Brian Beveridge <brian.woeip@gmail.com>; Margaret Gordon <margaret.woeip@gmail.com>; Marvin, Cynthia@ARB <cynthia.marvin@arb.ca.gov>; Yura, Elizabeth@ARB <eyura@arb.ca.gov>; David Vintze <DVintze@baaqmd.gov>; Alison Kirk <AKirk@baaqmd.gov>; anna.lee@acgov.org

Cc: grow.r@att.net

Subject: RSVP Date check: OAB update call/meeting week of 5/22

All

Per the exchange below, it looks like this could be a good time to catch up with each other, especially with the City's cancellation of tomorrow's (May 18) agency/City meeting on mitigation plans. With the next City meeting with the

003448 2020-10-29

agencies set for May 30, I suggest we aim for a call/meeting sometime next week, the week of May 22. Please get back to me with any *unmoveable* constraints on your schedule for next week and we'll try to find a time that works for all. I can set up a conference line.

My only unmoveable conflicts are:

Monday 5/22 8-10

Tuesday 5/23 1-2:30

Weds 5/24 11-12:30

Friday 5/26 12-5

Thanks

Richard

Personal Matters / Ex. 6

Title VI OAB update

BB

Brian Beveridge <brian.woeip@gmail.com>

Reply all |

Today, 8:09 PM

Grow, Richard;

David Vintze <DVintze@baaqmd.gov>;

Marvin, Cynthia@ARB <cynthia.marvin@arb.ca.gov>;

Lee, Anna, Public Health, CAPE <Anna.Lee@acgov.org>;

+2 more

Richard

We are pretty unclear about how these agency meetings with the city are going. We would like to have a conference call with all our collaboration partners and get picture of what the future looks like regarding the Oakland logistics center mitigations and transition to the 21st Century.

Back in Dec, and again in Jan, there seemed to be some strong intentions on the part of the agencies to develop a unified goal statement to inspire the city and port to greater action. Here at WOEIP we're not sure where this intentions went. Could you take the task of coordinating a phone call with our WOTRC partners so that we can all get up to speed before the next city meeting on the 30th.

Please call me if you need more clarity.

Thanks, Brian

From: Grow, Richard

Sent: Wednesday, May 17, 2017 8:13 AM

To: Margaret Gordon; Brian Beveridge

Cc: Marvin, Cynthia@ARB; Yura, Elizabeth@ARB; David Vintze; Alison Kirk; 'Lee, Anna, Public Health, CAPE'

Subject: Agency documents on OAB/Port mitigation

Ms. Margaret and Brian

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Richard

--
Ms. Margaret Gordon/Co-Director
West Oakland Environmental Indicators Project
349 Mandela Parkway

003451 2020-10-29

Oakland, CA 94607
510-257-5647 Direct line
www.woeip.org

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 12/4/2017 7:49:59 PM
To: PMcGowan@oaklandnet.com
CC: wgilchrist@oaklandnet.com; sggrant@envirocommunications.com; agardner@portoakland.com
Subject: Truck Management Plan - studies and scope

Patricia McGowan (cc William Gilchrist, Andrea Gardner, Surlene Grant)

This note is to follow up on the suggestion I put forward at the excellent community workshop on trucks in West Oakland which you hosted this past Saturday. In my remarks Saturday I made reference to a suggestion previously put forward by Ms. Margaret Gordon of the WOEIP at the July 10 meeting at City Hall which you also hosted, and during which EDF presented the findings from its "Street View" project documenting on a fine scale (block by block) the levels and distribution of black carbon. At the July 10 meeting Ms. Gordon suggested that the 20 or so parties gathered around the table, representing perhaps a dozen organizations, agencies and interests, work collaboratively together to assess and address the implications of the studies findings with regard to mitigation of the effects revealed by the study.

My suggestion this past Saturday was that you, along with others carrying out this latest "truck management plan" exercise, incorporate into the current planning effort time to for participants in the planning effort to consider the EDF/Google study as well as a more recent UC Berkeley assisted "100 x 100" West Oakland black carbon monitoring study. As I mentioned Saturday, there may be no community in the country for which there is a richer availability of local scale air pollutant data. It seems here that it would be unfortunate to not make use of this information in coming up with a truck plan addressing the public health impacts of truck-related operations in West Oakland.

Regarding the scope of the TMP, I hope you will be open to the possibility that consideration of this additional information could have some effect on the scope of the plan itself. It was clear from the discussions Saturday that the issue of the scope of the TMP is itself an issue of quite some concern to many stakeholders. This also goes to the assurances I had previously received from both yourself and Claudia Cappio at the August 23 Air Quality Stakeholders meeting, assurances that the scope of the TMP had not already been set, but would rather be set by way of the interactive process which you would be convening this fall. I found this encouraging, as well as consistent with the language of mitigation measure 4.3-7, committing to a truck management plan and enumerating 8 potential "elements", while also including the caveat that the plan "is not limited to" that list of elements.

I understand that you have been assuming the viability of a "five step" planning process as laid out at the Saturday meeting, with the next (i.e. third) meeting to be focused on "prioritization" of measures proposed by City staff based on the first two meetings, and acknowledge that my suggestions might result in the TMP process taking a bit longer, but hope that you will consider whether they might also add to the quality of and support for the plan. There may be some logic in getting a common understanding of, and agreement on, the scope of the plan before moving on to prioritizing components of the plan.

Please feel free to call me directly to discuss this further, and thanks again for the very educational event this past weekend.

Richard Grow
US EPA
Region 9
(415) 947-4104

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 5/30/2017 4:11:57 PM
To: Brian Beveridge [brian.woeip@gmail.com]; Margaret Gordon [margaret.woeip@gmail.com]; Marvin, Cynthia@ARB [cynthia.marvin@arb.ca.gov]; Yura, Elizabeth@ARB [eyura@arb.ca.gov]; David Vintze [DVintze@baaqmd.gov]; Alison Kirk [AKirk@baaqmd.gov]; anna.lee@acgov.org
Subject: REMINDER: Wednesday May 31, 1-2pm for OAB update call/meeting

Call in number is **Conference Line/Code / Ex. 6** Wednesday, May 31, 1-2 pm. Please review the email chain below for the context and need for this call. Thank you.

Richard
Office: (415) 947-4104

Personal Matters / Ex. 6

From: Grow, Richard
Sent: Thursday, May 18, 2017 1:35 PM
To: 'Brian Beveridge' <brian.woeip@gmail.com>; 'Margaret Gordon' <margaret.woeip@gmail.com>; 'Marvin, Cynthia@ARB' <cynthia.marvin@arb.ca.gov>; 'Yura, Elizabeth@ARB' <eyura@arb.ca.gov>; 'David Vintze' <DVintze@baaqmd.gov>; 'Alison Kirk' <AKirk@baaqmd.gov>; 'anna.lee@acgov.org' <anna.lee@acgov.org>
Subject: Confirming Wednesday May 31, 1-2pm for OAB update call/meeting

Looks like our best bet is Wednesday, May 31 from 1-2 pm. Please protect that time slot and I'll tie down a conference room and location for those who want to gather together. This will be the day after the City's second meeting with the agencies so we may know more about the City's approach by then. Thanks

Richard

From: Grow, Richard
Sent: Thursday, May 18, 2017 12:12 PM
To: Brian Beveridge <brian.woeip@gmail.com>; Margaret Gordon <margaret.woeip@gmail.com>; Marvin, Cynthia@ARB <cynthia.marvin@arb.ca.gov>; Yura, Elizabeth@ARB <eyura@arb.ca.gov>; David Vintze <DVintze@baaqmd.gov>; Alison Kirk <AKirk@baaqmd.gov>; anna.lee@acgov.org
Subject: Week of May 30: RSVP Date check: OAB update call/meeting

All

OK, from the replies I see we're trying to thread the needle and are missing several principals. This discussion is not only an update but a basic check on alignments going forward, so we need full participation. The City's May 30 meeting (2-3:30) is only the second of three. Dave V. should be back in the office by the week of May 30, hopefully Cynthia. How do your calendars look Weds – Friday, May 31 – June 2 ?

Richard

From: Grow, Richard
Sent: Wednesday, May 17, 2017 8:47 PM
To: Brian Beveridge <brian.woeip@gmail.com>; Margaret Gordon <margaret.woeip@gmail.com>; Marvin, Cynthia@ARB <cynthia.marvin@arb.ca.gov>; Yura, Elizabeth@ARB <eyura@arb.ca.gov>; David Vintze <DVintze@baaqmd.gov>; Alison Kirk <AKirk@baaqmd.gov>; anna.lee@acgov.org

Cc: grow.r@att.net

Subject: RSVP Date check: OAB update call/meeting week of 5/22

All

Per the exchange below, it looks like this could be a good time to catch up with each other, especially with the City's cancellation of tomorrow's (May 18) agency/City meeting on mitigation plans. With the next City meeting with the agencies set for May 30, I suggest we aim for a call/meeting sometime next week, the week of May 22. Please get back to me with any *unmoveable* constraints on your schedule for next week and we'll try to find a time that works for all. I can set up a conference line.

My only unmoveable conflicts are:

Monday 5/22 8-10

Tuesday 5/23 1-2:30

Weds 5/24 11-12:30

Friday 5/26 12-5

Thanks

Richard

Personal Matters / Ex. 6

Title VI OAB update

BB

Brian Beveridge <brian.woeip@gmail.com>

Reply all |

Today, 8:09 PM

Grow, Richard;

David Vintze <DVintze@baagmd.gov>;

Marvin, Cynthia@ARB <cynthia.marvin@arb.ca.gov>;

Lee, Anna, Public Health, CAPE <Anna.Lee@acgov.org>;

+2 more

Richard

We are pretty unclear about how these agency meetings with the city are going. We would like to have a conference call with all our collaboration partners and get picture of what the future looks like regarding the Oakland logistics center mitigations and transition to the 21st Century.

Back in Dec, and again in Jan, there seemed to be some strong intentions on the part of the agencies to develop a unified goal statement to inspire the city and port to greater action. Here at WOEIP we're not sure where this intentions went. Could you take the task of coordinating a phone call with our WOTRC partners so that we can all get up to speed before the next city meeting on the 30th.

Please call me if you need more clarity.

Thanks, Brian

From: Grow, Richard

Sent: Wednesday, May 17, 2017 8:13 AM

To: Margaret Gordon; Brian Beveridge

Cc: Marvin, Cynthia@ARB; Yura, Elizabeth@ARB; David Vintze; Alison Kirk; 'Lee, Anna, Public Health, CAPE'

Subject: Agency documents on OAB/Port mitigation

Ms. Margaret and Brian

Deliberative Process / Ex. 5

Richard

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 1/10/2018 4:21:22 PM
To: Reyes, Deldi [Reyes.Deldi@epa.gov]
Subject: AB 617 & BAAQMD

Deldi

Still sorting out what is landing where at BAAQMD, this note from Jack B. may help. Looks like Greg is in the middle of the road on both AB617 and the nitty gritty port stuff. Checking in with others of Jack's staff this a.m. (branch chief) also heard that Friday morning BAAQMD is having a "regular" AB 617 "regular" with CARB, and that the state seems to be managing this on 4 channels, ie community emission reductions, BACT, permitting etc. and that this will be their first call dealing with all four. Each of these involve different staff.

RG

From: Jack Broadbent [mailto:jack@baaqmd.gov]
Sent: Tuesday, January 09, 2018 9:44 PM
To: Grow, Richard <Grow.Richard@epa.gov>
Cc: dbreen@baaqmd.gov; Gregory H. Nudd <gnudd@baaqmd.gov>
Subject: Re: Urgent questions on MAQIP

Richard,

I will personally participate on the MAQIP Steering group, but as far as our staff contact, I would coordinate with Greg Nudd of the District. I asked to be on the invite list specifically because of the concerns from community members about reconvening this group. I do think the interagency representatives should talk before the first meeting of the MAQIP. We should also talk about our recent discussions with the Port re: projects and related issues.

Jack

Get Outlook for iOS

From: Grow, Richard <grow.richard@epa.gov>
Sent: Tuesday, January 9, 2018 7:51 PM
Subject: Urgent questions on MAQIP
To: Jack Broadbent <jack@baaqmd.gov>
Cc: Damian Breen <dbreen@baaqmd.gov>, Gregory H. Nudd <gnudd@baaqmd.gov>

Jack (cc Damian and Greg)

We have just recently been contacted by the Port of Oakland's contractor about reconvening the MAQIP Task Force. Even though we had been hearing about this via WOEIP for some time, details had been at best very scarce. At the same time we are aware that the last round of MAQIP (2009) concluded amidst significant dissatisfaction among the "interagency" group which included your and our agencies as well as CARB and ACPH, that dissatisfaction being well memorialized in a subsequent port-funded evaluation report by Viveka Chen. We are also aware that the WOEIP has voiced concerns about this reconvening which have yet to be responded to by the Port. Finally, it is our understanding that the first of very few planned meetings under this reconvened process has been set for January 25 or 26th.

Could you please let us know whom at your office we should be talking to and coordinating with regarding this effort. Any thoughts on whether the schedule and process for this is already set in stone would also be welcome. Finally, please consider whether it might be useful for the member agencies of the "interagency work group" from the 2008-9 effort to talk prior to the formal launch of this effort.

Thanks again,

Richard

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 5/26/2017 12:58:31 AM
To: Reyes, Deldi [Reyes.Deldi@epa.gov]
Subject: Re: Pittsburg

I like this, it creates a T6 liability for Pittsburg attached to a broad variety of things they might do. The West Oakland T6 complaint showed me this as Ryan and I have had to walk ECRCO through Nova's BF grants and show them that although the BFFunding was long ago spent, the "products" (revolving loan fund, revitalization plans etc) are very much "in use" and make the City of Oakland liable for the OAB activities of the city. We should fund all the EJ cities. RG

From: Reyes, Deldi
Sent: Thursday, May 25, 2017 5:28 PM
To: Grow, Richard
Subject: Pittsburg

Ha! Hope this doesn't turn into Vallejo cement plant redux

Rep. Mark SeSaulnier (D-CA-11): At the request of our Superfund Division, Brent Maier extended an invitation to Congressman Mark DeSaulnier to participate in a Brownfields event announcement in the City of Pittsburg on Wednesday, May 31, 2017 at 10:00am. The Brownfields Grant of about \$300,000 will be awarded to the City of Pittsburg to support the future of Pittsburg's industrial waterfront. This funding directly supports the broader goals of the Northern Waterfront Economic Development Initiative. Alexis Strauss, U.S. EPA's Acting Regional Administrator, will be joined by Merl Craft, Mayor of Pittsburg, and Federal Glover, Contra Costa County Supervisor, to share exciting news about the revitalization of the site. Awaiting word back on the Congressman's interest and availability to attend this event.

RUN—DON'T WALK

Deldi Reyes | U.S. Environmental Protection Agency | Region 9 | Enforcement Division | Tel 415.972.3795 | reyes.deldi@epa.gov

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 1/10/2018 4:15:50 PM
To: Donez, Francisco [Donez.Francisco@epa.gov]
CC: Israels, Ken [Israels.Ken@epa.gov]
Subject: Comments: Document: Case study contract scope

Francisco

See Ken's comments below, I think he is a master at drawing out information by way of evaluation processes like this. I think we share the view that this may become a model (template) for evaluating revisions or updates to ports/goods movement clean-up plans. From our discussions here one question which might bear further excavation is how the CAAP updates (or analogous procedures in the Bay Area and elsewhere) take into consideration, or coordinate with, other efforts such as regional air quality plans (SIPs etc.), statewide freight strategies, and community toxics initiatives such as South Coast and BAAQMD are carrying out.

Richard

-----Original Message-----

From: Israels, Ken
Sent: Wednesday, January 10, 2018 5:46 AM
To: Grow, Richard <Grow.Richard@epa.gov>
Subject: RE: Document: Case study contract scope

Richard -

Thanks for taking the extra step to ensure that I received the file. I have reviewed the file and was wondering if it makes sense to share this activity (or document) with Kurt and Mary - what do you think?

I also note that there are a few binary questions (a pet peeve of mine in terms of evaluation practice) in the appendix that could be reframed to generate more information-rich responses (see bullet 3 under People, relationships, partnerships community; bullets 1 and 8 under Technologies, strategies, and practices; and bullet 1 under Broader questions).

Ken

-----Original Message-----

From: Grow, Richard
Sent: Tuesday, January 9, 2018 8:19 PM
To: Israels, Ken <Israels.Ken@epa.gov>
Subject: Document: Case study contract scope

Ken - I got some sort of indication that the document couldn't be forwarded, so I've attached it again here (several times due to the clumsiness of home access to Outlook). RG

From: Grow, Richard
Sent: Tuesday, January 9, 2018 2:26 PM
To: Donez, Francisco
Cc: Israels, Ken
Subject: FW: Case study contract scope

Grow, Richard has shared a OneDrive for Business file with you. To view it, click the link below.

[icon]

2017-12-22 FINAL DRAFT CAAP case study scope.docx<https://usepa-my.sharepoint.com/personal/donez_francisco_epa_gov/Documents/MFN/CAAP%20case%20study/2017-12-22%20FINAL%20DRAFT%20CAAP%20case%20study%20scope.docx?web=1>

Francisco

Fascinating set of questions and very much on the mark as the kinds of questions and issues about which the City and Port of Oakland need to be thinking (and accounting for with the public) in their planning. I'm copying Ken given his work in the area of evaluations as well as on resolving the West Oakland T6 complaint. Thank you.

Richard

From: Donez, Francisco
Sent: Tuesday, January 09, 2018 2:03 PM
To: Grow, Richard <Grow.Richard@epa.gov>
Subject: RE: Case study contract scope

Hi Richard: Here it is. A more formalized work plan (clarifying roles, etc.) with the contractor ERG is still in the works, but the attached document mostly covers it.

If you see any of the proposed issues/questions that deserve particular attention with regard to the Oakland situation, or think of additional questions for us to ask, let me know.

Francisco

Francisco J. Dóñez, Ph.D.
Ports/Marine and Locomotive Sector Lead, West Coast Collaborative U.S. Environmental Protection Agency,
Region 9
600 Wilshire Blvd., Suite 1460
Los Angeles, CA 90017

Tel. (213) 244-1834
Fax (213) 244-1850

<http://westcoastcollaborative.org><<http://westcoastcollaborative.org/>>
<http://www.epa.gov/region9/air/>

From: Grow, Richard
Sent: Tuesday, January 09, 2018 1:41 PM
To: Donez, Francisco <Donez.Francisco@epa.gov><mailto:Donez.Francisco@epa.gov>>
Subject: Case study contract scope

Francisco – Would you be able to share the project description and/or the scope of work for the upcoming case study you described on today's EJ/AT call ? I remember this being on the MFN wish list, but as the issue of “updating” the Oakland Port/OAB mitigation plans has evolved I'm thinking there may be more parallels than I'd previously understood. Thanks

Richard

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 1/10/2018 4:08:37 PM
To: Jack Broadbent [jack@baaqmd.gov]
CC: dbreen@baaqmd.gov; Gregory H. Nudd [gnudd@baaqmd.gov]
Subject: RE: Urgent questions on MAQIP

Jack

Thank you, very encouraging. We're meeting this afternoon to figure out who our management rep will be. Last time it was Amy Zimpher as the AD with geographic responsibility for the Bay Area, but that's changed, and once we get our new Regional Administrator there will likely further changes. BTW several of us are headed over to your office Friday afternoon to discuss AB617 with Greg and others, with ARB and CalEPA likely dialing in.

Richard

From: Jack Broadbent [mailto:jack@baaqmd.gov]
Sent: Tuesday, January 09, 2018 9:44 PM
To: Grow, Richard <Grow.Richard@epa.gov>
Cc: dbreen@baaqmd.gov; Gregory H. Nudd <gnudd@baaqmd.gov>
Subject: Re: Urgent questions on MAQIP

Richard,

I will personally participate on the MAQIP Steering group, but as far as our staff contact, I would coordinate with Greg Nudd of the District. I asked to be on the invite list specifically because of the concerns from community members about reconvening this group. I do think the interagency representatives should talk before the first meeting of the MAQIP. We should also talk about our recent discussions with the Port re: projects and related issues.

Jack

Get [Outlook for iOS](#)

From: Grow, Richard <grow.richard@epa.gov>
Sent: Tuesday, January 9, 2018 7:51 PM
Subject: Urgent questions on MAQIP
To: Jack Broadbent <jack@baaqmd.gov>
Cc: Damian Breen <dbreen@baaqmd.gov>, Gregory H. Nudd <gnudd@baaqmd.gov>

Jack (cc Damian and Greg)

We have just recently been contacted by the Port of Oakland's contractor about reconvening the MAQIP Task Force. Even though we had been hearing about this via WOEIP for some time, details had been at best very scarce. At the same time we are aware that the last round of MAQIP (2009) concluded amidst significant dissatisfaction among the "interagency" group which included your and our agencies as well as CARB and ACPH, that dissatisfaction being well memorialized in a subsequent port-funded evaluation report by Viveka Chen. We are also aware that the WOEIP has voiced concerns about this reconvening which have yet to be responded to by the Port. Finally, it is our understanding that the first of very few planned meetings under this reconvened process has been set for January 25 or 26th.

Could you please let us know whom at your office we should be talking to and coordinating with regarding this effort. Any thoughts on whether the schedule and process for this is already set in stone would also be welcome. Finally, please consider whether it might be useful for the member agencies of the "interagency work group" from the 2008-9 effort to talk prior to the formal launch of this effort.

Thanks again,

Richard

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 5/23/2017 10:35:36 PM
To: Strauss, Alexis [Strauss.Alexis@epa.gov]; Jordan, Deborah [Jordan.Deborah@epa.gov]
CC: Miller, Amy [Miller.Amy@epa.gov]; Adams, Elizabeth [Adams.Elizabeth@epa.gov]; Matthew Lakin [Lakin.Matthew@epa.gov]; BANDROWSKI, MIKE [Bandrowski.Mike@epa.gov]; Reyes, Deldi [Reyes.Deldi@epa.gov]; Garnett, Desean [Garnett.Desean@epa.gov]
Subject: Update: OAB meetings and Title VI status

All – General status seven weeks after receipt of complaint against City and Port, filed with EPA and DOT on April 4:

- Title VI complaint status call today between our office, ECRCO and DOT. Neither EPA nor DOT have formally accepted the complaint (jurisdiction review) yet. DOT very sure it will, just tying down details. EPA/ECRCO can accept against Port, still unable to find jurisdiction for City; we're working with them to resolve. DOT will draft letter to City/Port without waiting to accept complaint, asking for their response to complaint and to see if informal discussions can proceed while legal review continues. DOT taking informal lead for now, EPA involvement in Title VI complaint as technical support may be best outcome.
- Series of three City-hosted mitigation plan meetings with ARB, BAAQMD, ACPH and our office continues. May 9 meeting reported on previously; May 18 cancelled (plans not ready); May 30 still on calendar.
- Governor's office. Ken Alex (OPR), previously involved in September, 2014, once more convened with ARB (Cynthia Marvin, Elizabeth Yura) and the City (Claudia Capio et al) on May 17. No firm commitments, ARB cautiously optimistic but awaiting concrete actions by City. I spoke briefly with him today, we'll talk again in a couple weeks when he's back in office. Possible "third party" role?
- EIP and usual agencies (ARB, BAAQMD, ACPH, us) will meet/call on May 31 to discuss (1) where we all left off following the December 13 meeting and subsequent document exchanges with the City in January, (2) options for moving forward. Previous "MAQIP" process (2009 Port air plan) coming up in many discussions (incl with Gov. office), pros and cons being frankly discussed, the resulting product seen by none of our agencies as adequate.

Overall still no visible change in process or mitigation plan products. My default assumption is the City is progressing quite well on the ground with its construction plans, unimpeded by community or agencies. Recent information on Claudia Capio's ("assistant city administrator in charge of development") role over past 16 years working directly for 3 Oakland mayors, Governor Brown and for developer Phil Tagami ("CEQA consultant") is seen by community advocates as relevant. I passed documentation on to DOT.

Richard

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 5/23/2017 7:56:46 PM
To: Fitzpatrick, Ryan (OST) [ryan.fitzpatrick@dot.gov]
Subject: FW: Further questions: Brownfields Grants and City/Port

Ryan

FYI and no response needed, but the May 17 email below from Nova Blazej of our office contains links to 4 one-pagers, each covering separate brownfields grants in 1997, 2000, 2006 and 2009, per Nova's note the most recent one closed in 2012. But if you pull up a couple of the one pagers I think you'll see that the products tend to be plans, assessments etc. that are very likely still "in use." I'm working with our BF program to see what they say about this, but I thought you might be able to get a feel for what these are about. If you have any obvious analogous situations at DOT, please feel free to share.

Richard

From: Grow, Richard
Sent: Tuesday, May 23, 2017 12:17 PM
To: Blazej, Nova <Blazej.Nova@epa.gov>
Cc: Garnett, Desean <Garnett.Desean@epa.gov>
Subject: Further questions: Brownfields Grants and City/Port

Hi Nova

Just got off a call with ECRCO and DOT's civil rights office, and the questions ECRCO have been pursuing are perhaps overly narrow. Tried to call you but it kicked over. The more general question (confirmed by DOT and DOJ) goes beyond when the funding ended and instead could be described as "*whether products of those funds are still in use by the recipient.*" As an example, if we had provided funding to purchase a bus back in 2012, and the bus was still in use, then the T6 liabilities and obligations would still apply.

In this case I don't know what the "products" were, but if they were, for instance, a land use or zoning plan still in use, or a mitigation plan or some mitigation equipment, then those would probably trigger the Title VI obligations. I know this is a bit complicated, and we can talk whenever you want, but could you give this some thought and let me know what you think ? I'm copying Desean Garnett at ORC as our R9 attorney involved.

Thanks

Richard
7-4104

From: Blazej, Nova
Sent: Friday, May 19, 2017 5:21 PM
To: Farrell, Ericka <Farrell.Ericka@epa.gov>
Cc: Keeler, Katsumi <Keeler.Katsumi@epa.gov>; Grow, Richard <Grow.Richard@epa.gov>; Reyes, Deldi <Reyes.Deldi@epa.gov>
Subject: RE: Brownfields Grants

Hi Ericka,

All of the grants to the City of Oakland are closed. They are nationally competitive grants that have been completed and closed out. This web page refers to 2009 EPA grants that were closed out in 2012. Let me know if you have other questions. Thanks, Nova

From: Farrell, Ericka

Sent: Wednesday, May 17, 2017 8:57 AM

To: Blazej, Nova <Blazej.Nova@epa.gov>

Cc: Keeler, Katsumi <Keeler.Katsumi@epa.gov>

Subject: Brownfields Grants

Hi Nova,

Freya Margand had requested some information from you for me on Brownfield grants rewarded to the City of Oakland. The grant links you sent are dated as far back as 2009 for distribution are those grants still distributing money as of today in 2017? There are current 2017 articles speaking about these Brownfield grants pertaining to the links you provided. Thank you for that. I am however, trying to decipher if that money is still being from one of these older grants or are they new? I have attached the news article. The news article gives me the impression that the City is still receiving funding from those grants. Are they still receiving funds or are the grant distribution completed? Or is EPA still providing some type of consultation services on these grants?

Thanks in advance for any assistance you can provide. Here are the links that you submitted to Freya on Brownfield Grants that went straight to the City of Oakland.

[Oakland, City of](#)

[Oakland, City of](#)

[Oakland, City of](#)

[Oakland, City of](#)

Ericka S. Farrell
Case Manager
External Civil Rights Compliance Office
202-564-0717

Message

From: Grow, Richard [Grow.Richard@epa.gov]
Sent: 12/4/2017 3:18:56 PM
To: BANDROWSKI, MIKE [Bandrowski.Mike@epa.gov]; Davidson, Ken [Davidson.Ken@epa.gov]
CC: Israels, Ken [Israels.Ken@epa.gov]
Subject: Topic 5.d.: December 5 OTAQ/Region 9 Meeting Draft Discussion Topics

Hi Mike, thanks for forwarding this.

If there is time under the Port of Oakland T6 issue, I'd like to discuss, very briefly, how resolution of the civil rights complaint has caused us to consider, and discuss with our partner agencies (CARB, BAAQMD), the need for what amounts to a "best available" goods movement mitigation measures policy. In discussions with our HQ civil rights office, and in the context of resolution discussions with the City and Port of Oakland, we have developed a rough framework for such a policy. However this ends up, the outcome will most likely be relevant to EJ GM communities elsewhere (most GM communities arguably are EJ communities). I'm copying Ken Israels as he has been involved in some of these discussions. If this doesn't fit in this format, I'd be glad to have a side discussion with OTAQ folks while they are here.

Richard

From: BANDROWSKI, MIKE
Sent: Friday, December 1, 2017 3:40 PM
To: Davidson, Ken; Grow, Richard
Subject: FW: December 5 OTAQ/Region 9 Meeting Draft Discussion Topics

FYI

Mike Bandrowski | Manager, Office of Air Toxics, Radiation and Indoor Air
U.S. Environmental Protection Agency | Region 9 | Air Division, Air-6 | 75 Hawthorne St |
San Francisco, CA 94105 | Tel 415.947-4194 | bandrowski.mike@epa.gov<mailto:bandrowski.mike@epa.gov>

From: Zimpfer, Amy
Sent: Friday, December 01, 2017 2:59 PM
To: Lakin, Matt <Lakin.Matthew@epa.gov>; Jordan, Deborah <Jordan.Deborah@epa.gov>
Cc: Lee, Anita <Lee.Anita@epa.gov>; Ungvarsky, John <Ungvarsky.John@epa.gov>; Lo, Doris <Lo.Doris@epa.gov>; Machol, Ben <Machol.Ben@epa.gov>; MIKULIN, JOHN <MIKULIN.JOHN@EPA.GOV>; Tax, Wienke <Tax.Wienke@epa.gov>; Doney, Francisco <Doney.Francisco@epa.gov>; Mayfield, Dana <mayfield.dana@epa.gov>; Zimpfer, Amy <Zimpfer.Amy@epa.gov>; Grow, Richard <Grow.Richard@epa.gov>; BANDROWSKI, MIKE <Bandrowski.Mike@epa.gov>; Gaudario, Abigail <Gaudario.Abigail@epa.gov>
Subject: December 5 OTAQ/Region 9 Meeting Draft Discussion Topics

Hi Deborah and Matt,

Attached please find a draft list of potential discussion topics for our December 5 meeting with OTAQ's Chris Grundler and Karl Simon. Karl and I agreed to an informal session, with discussion topics rather than a set agenda and formal presentations. They are expected to arrive sometime around 2:30pm. The meeting will be held in the Navajo Room. Here are the expected participants:

2:30pm-3:00pm (approx.) Chris, Karl, Deborah, Matt, Ben, Amy
3:00pm-4:00pm (approx.) Same as above plus John Mikulin, Dana Mayfield, John Ungvarsky and via telephone, Francisco Doney and Karina O'Connor. We may have one or two additional staff.

Please review the discussion topics and let me know if you have any comments. I will incorporate comments and send to Chris and Karl on Monday.

Thank you.

Amy

p.s. to Abi--can you please hold the Navajo Room until 4:30pm in case the meeting extends beyond 4pm?

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 7/18/2017 12:31:42 AM
To: LUEHE, DOUGLAS [luehe.douglas@epa.gov]
Subject: Re: Attendees: Info on Friday Port mtg: Solutions for Reducing and Preventing Emissions at the Port of Oakland and Oakland Army Base Working Meeting

Hi Doug

I'd say a good start towards productive, I'm still gathering materials to "report" on the meeting. Just got off phone call from Councilperson Kaplan (also on BAAQMD and ACTC boards) who co-convened the meeting along with BAAQMD, and there is good possibility of alignment coming together, though City/Port still leaning back instead of forward. BTW T6 formal acceptance letter was on verge earlier today at HQ, should make it out the door in next day or so.

Richard

From: LUEHE, DOUGLAS
Sent: Monday, July 17, 2017 4:18 PM
To: Grow, Richard
Subject: Re: Attendees: Info on Friday Port mtg: Solutions for Reducing and Preventing Emissions at the Port of Oakland and Oakland Army Base Working Meeting

Hi Richard,
Don't remember thanking you for this background info. Great stuff!
Productive meet last Friday?

.....

Doug Luehe
Chief of Staff, EPA R9

Sent from my iPhone

On Jul 11, 2017, at 2:46 PM, Grow, Richard <Grow.Richard@epa.gov> wrote:

Doug – Looking at the invitation list in the email, here's some background listed under their respective email addresses:

abockelman@mtc.ca.gov;

MTC is the Metropolitan Transportation Commission covering the entire Bay Area. I am not familiar with this person. The ED of MTC is Steve Heminger and I would not be surprised if he attended.

cynthia.marvin@arb.ca.gov;

Cynthia Marvin is a Division Director at the Air Resources Board and long time ally at the Air Resources Board, in charge of all things freight, some toxics, and used to have most of the AB32 cap and trade program, now just the funding piece.

Karen Schkolnick <kschkolnick@baaqmd.gov>;

Not sure of Karen's role, but the BAAQMD seniors will be there, at least Damian Breen, Deputy Executive Officer working for Jack Broadbent, possibly Jack himself or other deputies (Jean Roggenkamp, Jim McKay)

muntu.davis@acgov.org; anna.lee@acgov.org;

Dr. Muntu Davis is head of the Public Health Director and County Health Officer of Alameda County and has been an invaluable supporter of cleaning up the Port and OAB. Over the past few years ACPH has been a national leader on public health and its "social determinants". Anna Lee works for Dr. Davis and is my day to day working contact there, excellent.

MDNichols@oaklandnet.com

Matt Nichols works out of the Mayor's office and is the "Policy Director, Transportation and Infrastructure, City of Oakland Mayor's Office." The Mayor has previously put him forward (to Alexis and myself) to deal with OAB issues but we have not been able to develop any constructive communications.

Not obvious why the City and not the Port, won't be surprised if the Port shows up.

Richard

From: Grow, Richard
Sent: Tuesday, July 11, 2017 9:51 AM
To: LUEHE, DOUGLAS <luehe.douglas@epa.gov>
Subject: Info on Friday Port mtg: Solutions for Reducing and Preventing Emissions at the Port of Oakland and Oakland Army Base Working Meeting
Importance: High

Doug – Here's the info on the Friday 12-2 meeting being convened by BAAQMD and Councilwoman Kaplan. I won't be coming in that day but will be coming to the meeting from Berkeley. The office is very close to the Oakland City Center BART station.

Richard

From: Aloha de Guzman [<mailto:adeguzman@baaqmd.gov>]
Sent: Monday, July 10, 2017 4:03 PM
To: abockelman@mtc.ca.gov; Grow, Richard <Grow.Richard@epa.gov>; cynthia.marvin@arb.ca.gov; Karen Schkolnick <kschkolnick@baaqmd.gov>; muntu.davis@acgov.org; anna.lee@acgov.org; MDNichols@oaklandnet.com
Cc: Sheng Thao <sthao@oaklandnet.com>; dbreen@baaqmd.gov; Maricela Martinez <mmartinez@baaqmd.gov>; Vanessa Johnson <vjohnson@baaqmd.gov>; Beba Sanchez <BSanchez@mtc.ca.gov>
Subject: RE: Solutions for Reducing and Preventing Emissions at the Port of Oakland and Oakland Army Base Working Meeting
Importance: High

Hello everyone,

Here is the address of the meeting location:

ACTC

1111 Broadway, Oakland, CA 94607 -- Room D

If you have any questions or concerns, please feel free to reach out to me or Ms. Kaplan's assistant Sheng Thao at sthao@oaklandnet.com or 510-238-7082.

Thank you!

Aloha de Guzman

Executive Secretary

Bay Area Air Quality Management District

Executive Office

375 Beale Street, Suite 600

San Francisco, Ca 94105

Office: 415.749.4782| Cell: 415.745.5633

adeguzman@baaqmd.gov

From: Aloha Galimba

Sent: Wednesday, June 28, 2017 8:48 AM

To: 'abockelman@mtc.ca.gov' <abockelman@mtc.ca.gov>; 'grow.richard@epa.gov' <grow.richard@epa.gov>; 'cynthia.marvin@arb.ca.gov' <cynthia.marvin@arb.ca.gov>; Karen Schkolnick <kschkolnick@baaqmd.gov>; 'muntu.davis@acgov.org' <muntu.davis@acgov.org>; 'anna.lee@acgov.org' <anna.lee@acgov.org>

Cc: Sheng Thao <sthao@oaklandnet.com>

Subject: Solutions for Reducing and Preventing Emissions at the Port of Oakland and Oakland Army Base Working Meeting

Hello,

The Bay Area Air Quality Management District is inviting you – or a representative from your organization - to attend a working meeting on solutions for reducing emissions and health impacts in the West Oakland Community from current operations at the Port of Oakland and future operations at the former Oakland Army Base.

This meeting will be hosted by Oakland Council Member at Large, Rebecca Kaplan, at the Alameda County Transportation Commission, which is located at 11th and Broadway in Downtown Oakland on **Friday July 14, 2017 between 12 pm – 2 pm.**

The goal of this meeting is to devise a workplan that harnesses and coordinates the resources of the participating entities.

Please confirm your participation with me with a CC to Ms. Kaplan' assistant Sheng Thao at Sthao@oaklandnet.com. If you have any questions or concerns, please feel free to reach out to me directly.

Thank you and have a great rest of the day!

Regards,

Aloha de Guzman
Executive Secretary

Bay Area Air Quality Management District

Executive Office

375 Beale Street, Suite 600 | San Francisco, CA 94105
Office: 415.749.4782| Cell: 415.745.5633

agalimba@baaqmd.gov| www.baaqmd.gov

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 7/17/2017 5:21:30 PM
To: dbreen@baaqmd.gov
Subject: Re: Port/OAB - presentation, Title VI

Damian - Thanks. BTW do you know the last name for Tess at ACTC ? I'm hoping to get an electronic copy of the 3 page handout ("Joint Alameda CTC, Port.....") document that was handed out. It looked o to me like Tess had prepared it as requested by Kaplan. Richard

From: Damian Breen <dbreen@baaqmd.gov>
Sent: Monday, July 17, 2017 9:59 AM
To: Grow, Richard
Subject: RE: Port/OAB - presentation, Title VI

Richard,

Please find the presentation attached. Thanks for your clarification, I expect that as we work through the costs of the technology we will get some more clarity on its "availability" from our partners.

Thank you for participating in the meeting.

Damian Breen
Deputy Air Pollution Control Officer
Bay Area Air Quality Management District
375 Beale Street, Suite 600
San Francisco, CA 94105
Tel: (415) 749-5041

From: Grow, Richard [mailto:Grow.Richard@epa.gov]
Sent: Friday, July 14, 2017 3:55 PM
To: Jack Broadbent <jack@baaqmd.gov>; Damian Breen <dbreen@baaqmd.gov>
Subject: Port/OAB - presentation, Title VI

Jack and Damian

Excellent presentation today, the discussion was quite constructive as well as revealing. I'm hoping you can share the Powerpoint so that I can share it with my management and staff involved in freight issues.

The point I was trying to make about the importance of clarifying barriers for each suggested measure has to do with, among other things, the pending Title VI investigation, which I suspect will be formally initiated within the next couple weeks. Oversimplifying somewhat, ultimately resolution of a civil rights complaint such as this one comes down to questions of the "availability of less discriminatory alternatives." And while "availability" does not have a clear or simple working definition, any clarity coming out of your current initiative as to why various parties (in particular the City and Port, being subject to the complaint) take the position that they cannot or will not adopt particular measures will be helpful. I suggested differentiating between legal,

technical and economic barriers, but would welcome a different categorization if you see that as more meaningful.

I should also note that in a discussion with DOT and EPA HQ civil rights offices last week, the issue of "subject matter" expertise came up and my management took the position that BAAQMD and CARB should be seen as national experts on the environmental issues relevant to the complaint. I should also mention that the working assumption shared by most of us involved in the complaint is that it would be greatly preferably to head as directly as possible for resolution rather than going through a prolonged and arduous investigative process.

Thanks again.

Richard

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 5/16/2017 5:36:22 PM
To: Veronica.Eady@arb.ca.gov
CC: Reyes, Deldi [Reyes.Deldi@epa.gov]
Subject: Following up on EJ/T6 - documents
Attachments: T6 C&T petition for reconsideration 8_2012 FINAL.pdf; AB 32 Title VI Complaint June 2012.pdf; T6 OCR 2r-00-r9_carb_resolution_letter.pdf; WOEIP Title VI Complaint 4_4_2017.pdf

Veronica

Thank you so much for your visit here last week, it was not only great to have you here in person, but also fascinating observe my management and colleagues in presenting themselves. I'm optimistic that this will be the start of a long and productive relationship.

Following up on a some of Title VI topics that came up, I am attaching (1) EPA's letter to CARB resolving a long past T6 complaint ("CARE"), and in which EPA memorializes agreements regarding CARB procedures, (2) a 2010 T6 complaint filed by CRPE on the AB32 C&T program, (3) CRPE's petition to reconsider and (4) the recent West Oakland Title VI complaint.

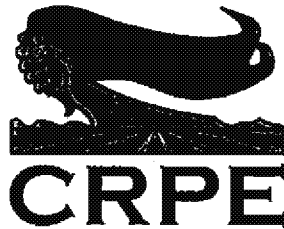
For what it's worth, coming off of our Regions "lead region" role for Title VI within EPA, and Alexis Strauss's role in leading that engagement, we have learned quite a bit about the benefits, and even necessity, for coordinating our EJ, Title VI and core media work, and in many instances our NEPA (fed CEQA) work. Along those lines we have also sought to learn more about how California Code 11135, essentially California's Title VI, works in practice. One detail regarding last year's Kettleman City Title VI settlement that may have gotten lost is that the original Title VI complaint was filed simultaneously with a similar complaint under 11135.

Finally, I am also attaching a copy of EarthJustice's April 4 Title VI complaint regarding the Oakland Army Base in West Oakland. This issue has remained unresolved for such a long time, and I want to note that CARB, and Cynthia Marvin and her staff in particular, have been a valuable partner in dealing with this issue over the past many years.

Please feel free to call on me at any time to discuss any of these matters further.

Richard Grow
US EPA
Region 9
Office: (415) 947-4104

Personal Matters / Ex. 6



CENTER ON RACE, POVERTY & THE ENVIRONMENT

47 KEARNY STREET, SUITE 804, SAN FRANCISCO, CA 94108 TEL 415-346-4179 FAX 415-346-8723 WWW.CRPE-EJ.ORG

June 8, 2012

Via Certified Mail, Return Receipt Requested, Facsimile, and Electronic Mail

Rafael DeLeon, Director
Helena Wooden-Aguilar, External Civil Rights – Assistant Director
U.S. Environmental Protection Agency
Office of Civil Rights
Mail Code 1201A
1200 Pennsylvania Ave, NW
Washington, D.C. 20460
Fax: (202) 501-1836
Deleon.Rafael@epamail.epa.gov
Wooden-Aguilar.Helena@epamail.epa.gov

Re: *Coalition for a Safe Environment v. California Air Resources Board; Complaint Pursuant to Title VI of the Civil Rights Act of 1964 and 40 C.F.R. part 7.*

Dear Mr. DeLeon and Ms. Wooden-Aguilar:

Coalition for a Safe Environment, Association of Irrigated Residents, California Communities Against Toxics, Society for Positive Action, and West County Toxics Coalition (collectively "Coalition for a Safe Environment") hereby file this Title VI complaint against the California Air Resources Board. Coalition for a Safe Environment fully expects the Office of Civil Rights to promptly accept and investigate this Complaint, pursuant to the deadlines in EPA's regulations implementing Title VI. Coalition for a Safe Environment also stands ready to assist EPA in its investigation, and to meaningfully participate in OCR's Title VI investigation and alternative compliance process, if any. Please do not hesitate to contact counsel for Coalition for a Safe Environment should you have any questions. Thank you for your efforts.

Sincerely,

Sofia Parino

Brent Newell

Stephanie Safdi, Legal Intern

cc: Diane Thompson, Chief of Staff (via electronic mail)
Tseming Yang, Deputy General Counsel (via electronic mail)

PROVIDING LEGAL & TECHNICAL ASSISTANCE TO THE GRASSROOTS MOVEMENT FOR ENVIRONMENTAL JUSTICE

RALPH SANTIAGO ABASCAL (1934-1997) DIRECTOR 1990-1997

LUKE W. COLE (1962-2009) EXECUTIVE DIRECTOR 1997-2009
003476 2020-10-29

1 Sofia L. Parino, CA SBN 221379
Brent Newell, CA SBN 210312
2 CENTER ON RACE, POVERTY & THE ENVIRONMENT
47 Kearny Street, Suite 804
3 San Francisco, CA 94108
415/346-4179
4 Fax: 415/346-8723

5 Caroline Farrell, CA SBN 202871
CENTER ON RACE, POVERTY & THE ENVIRONMENT
6 1012 Jefferson St
Delano, CA 93215
7 661/720-9140
8 Fax: 661/720-9483

8 Attorneys for Complainants

9
10 **BEFORE THE**
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

11		
12	Coalition for a Safe Environment,	COMPLAINT UNDER TITLE VI OF
13	Association of Irrigated Residents,	
14	California Communities Against Toxics,	
15	Society for Positive Action, and West	
16	County Toxics Coalition.	
17	Complainants,	THE CIVIL RIGHTS ACT OF 1964, 42
18	v.	
19	California Air Resources Board,	
20	Respondent.	
21		

21
22
23
24
25
26
27
28

1 I. INTRODUCTION

2 This is a civil rights Complaint by Coalition for a Safe Environment, Association of
3 Irrigated Residents, California Communities Against Toxics,, Society for Positive Action, and
4 West County Toxics Coalition under Title VI of the Civil Rights Act of 1964 and 40 C.F.R.
5 part 7, alleging discrimination in the approval of the California Cap on Green House Gas
6 Emissions and Market-Based Compliance Mechanisms Regulation, Including Compliance
7 Offset Protocols ("Cap and Trade"). This Complaint is against the California Air Resources
8 Board ("CARB"), which is the California state agency responsible for the creation and
9 implementation of measures to meet the requirements of The Global Warming Solutions Act,
10 also known as AB 32, and who approved the Cap and Trade regulation.

11 This Complaint demonstrates all four elements required to establish a *prima facie*
12 violation of Title VI under U.S. Environmental Protection Agency ("EPA") implementing
13 regulations: (1) CARB's action has an adverse impact; (2) that is discriminatory on the basis
14 of race, color or national origin; (3) caused by a recipient of federal financial assistance; (4)
15 within the statute of limitations period. CARB's discriminatory action took place on
16 December 13, 2011 when the Office of Administrative Law approved CARB's Cap and Trade
17 regulation and filed it with the Secretary of State.¹ This action will result in a substantial
18 adverse effect on African American, Latino, and Asian/Pacific Islander residents throughout
19 California because the facilities regulated under Cap and Trade are primarily located in
20 communities of color. Populations living within six miles of industrial facilities
21 disproportionately bear the impacts of co-pollutant emissions, such as particulate matter and
22 toxics.² Over two-thirds of California's low-income African Americans and about 60% of
23 low-income Latinos and Asian/Pacific Islanders live within 6 miles of a Cap and Trade
24

25 ¹Gov. Code §§ 11340.5(b) and 11343.

26 ²Manuel Pastor, et. al, *Minding the Climate Gap: What's at Stake if California's Climate Law*
27 *Isn't Done Right and Right Away*, U.S.C. Program for Environmental and Regional Equity
28 (2010), 8 available at <http://dornsife.usc.edu/pere/documents/mindingthegap.pdf> (hereinafter,
Minding the Climate Gap). Attached as Exhibit 1.

1 facility.³ Under Cap and Trade, the residents of these communities will not receive the benefit
2 of co-pollutant emission reductions, and could even see an increase in emissions, if facilities
3 purchase allowances and offsets as Cap and Trade allows. Cap and Trade disparately and
4 adversely affects communities of color, which violates Title VI.

5 **II. THE COMPLAINANTS**

6 Complainants are various environmental justice community organizations who have
7 engaged with CARB throughout the administrative process and provided testimony before
8 CARB on the adverse and disparate impacts of Cap and Trade.

9 Coalition for a Safe Environment (“CSE”) is a non-profit environmental justice
10 community organization headquartered in Wilmington, CA. CSE has members in
11 Wilmington, San Pedro, Long Beach and Carson who live near Cap and Trade facilities.

12 Association of Irrigated Residents (“AIR”) advocates for air quality and environmental
13 health in the San Joaquin Valley. Members reside near polluting industries in Kern, Tulare,
14 Kings, Fresno, and Stanislaus counties.

15 California Communities Against Toxics (“CCAT”), a project of the Agape
16 Foundation, is a California non-profit dedicated to protecting environmental health and justice
17 in California. CCAT advocates in the public interest for clean air, clean water, and protective
18 toxic site cleanups, as well as food quality and food security for local communities. CCAT
19 distributes educational material and holds regular community trainings where residents can
20 learn about the impact of pollution on their health and well-being. CCAT appears before
21 federal, state and locals agencies to advocate for protective and just environmental policies.
22 Jane Williams, the executive director of CCAT, serves as the co-chair of the Environmental
23 Justice Advisory Committee (“EJAC”).

24 Society for Positive Action (“SPA”) is a non-profit grassroots community-based
25 environmental justice organization founded in 1999 to achieve its mission of helping
26 communities in the Los Angeles basin fight disproportionate impacts from local polluters.

27
28 ³*Id.* at 9, Figure 2.

1 Society for Positive Action is led by and serves low-income communities in Los Angeles who
2 would be significantly impacted by Cap and Trade.

3 West County Toxics Coalition ("WCTC") is a California non-profit, multi-racial
4 membership organization founded in 1986 to empower low and moderate-income residents to
5 exercise greater control over environmental problems that impact their quality of life in
6 Contra Costa County, particularly West Contra Costa County, in Northern California.

7 **III. TIMELINESS OF COMPLAINT**

8 A complaint must be filed within 180 days of the discriminatory act.⁴ CARB approved
9 the final Cap and Trade regulation on October 20, 2011 and filed it with the Office of
10 Administrative Law (OAL) on October 27, 2011 for approval.⁵ Cap and Trade did not
11 become final until OAL approved the regulation and filed it with the Secretary of State on
12 December 13, 2011.⁶ This Complaint is thus timely filed.

13 **IV. FINANCIAL ASSISTANCE**

14 CARB must comply with EPA's Title VI implementing regulations because the Board
15 receives substantial federal financial assistance from the EPA through grants.⁷ EPA gave
16 CARB \$7,053,811 in grant awards in fiscal year 2011 and \$3,454,141 in grant awards to date
17 in fiscal year 2012.⁸

18 **V. STATEMENT OF FACTS**

19 **A. The Global Warming Solutions Act, AB 32.**

20 In 2006, the California Legislature enacted AB 32, the Global Warming Solutions Act.
21 This landmark legislation requires the state to reduce greenhouse gas emissions to the
22
23

24 ⁴40 C.F.R. § 7.120(b)(2).

25 ⁵Resolution No. 11-32, CARB, Regular Board Meeting, October 20, 2011.

26 ⁶See CARB website: <http://www.arb.ca.gov/regact/2010/capandtrade10/capandtrade10.htm>;
27 *see also* Gov. Code § 11340.5(b).

27 ⁷40 C.F.R. § 7.15.

28 ⁸See USAspending.gov (last accessed 5/24/12). Attached as Exhibit 2; *see also* 40 C.F.R. §
7.15.

1 statewide limit of 1990 levels by 2020 and designates CARB as the lead state agency.⁹ AB 32
2 specifically recognizes that certain “regions of the state . . . have the most significant exposure
3 to air pollutants, including but not limited to, communities with minority populations,
4 communities with low-income populations or both.”¹⁰ Recognizing this, AB 32 seeks to
5 protect California’s vulnerable and over-exposed communities from carbon emissions and
6 other pollutants that accompany carbon, known as co-pollutants.¹¹ To assist with the goal of
7 protecting over-burdened communities, the legislature created the Environmental Justice
8 Advisory Committee (“EJAC”).¹² EJAC members represent the communities in California
9 most impacted by air pollution and represent a broad cross-section of California’s
10 environmental justice movement. EJAC did not recommend Cap and Trade and urged CARB
11 to consider localized impacts of its plan.¹³

12 **B. CARB’s Single-Minded March Toward Cap and Trade.**

13 Although AB 32 does not require or recommend a market system, CARB created and
14 adopted Cap and Trade as the strategy to regulate greenhouse gas emissions from industrial
15 sources, which account for approximately 20% of California’s total greenhouse gas emissions.
16 Under Cap and Trade, an overall greenhouse gas emission limit is set (the cap) and facilities
17 subject to the cap are able to trade permits (allowances) to emit greenhouse gases.¹⁴ CARB
18

19 ⁹Health & Safety Code § 38510; *see also* §§ 38501(f) - (h), 38505(n), and 38550.

20 ¹⁰*Id.* at § 38501(h).

21 ¹¹*Id.* at §§ 38562(b)(4) (“ensure that activities undertaken pursuant to the regulations
22 complement, and do not interfere with, efforts to achieve and maintain federal and state
23 ambient air quality and to reduce toxic air contaminant emissions.”), 38562(b)(1)-(9) and
24 38570(b)(1)-(3) (requires CARB to evaluate the potential for localized effects before
25 implementing a market-based compliance mechanism).

26 ¹²*Id.* at § 38591(a).

27 ¹³*See Recommendations and Comments of the Environmental Justice Advisory Committee on
28 the Implementation of the Global Warming Solutions Act of 2006 (AB32) on the Proposed
Scoping Plan*, Letter to Chairman Nichols and Mr. Goldstone, Environmental Justice
Advisory Committee (Dec. 2008) available at
<http://www.arb.ca.gov/cc/ejac/proposedplan-ejaccommentsfinaldec10.pdf>.

¹⁴*See* Cal. Code Regs. tit. 17 § 95801 *et seq.*; Refineries, cement production facilities, oil and
gas production facilities, glass manufacturing, and food processing plants that emit at least

1 plans to give away allowances for free to Cap and Trade facilities.¹⁵ Cap and Trade facilities
2 are also able to purchase additional allowances at an auction or from one another.¹⁶ The
3 system also allows Cap and Trade facilities to purchase offsets to meet their emission limits.
4 An offset is the reduction of greenhouse gas from an activity or facility that is not regulated
5 under Cap and Trade. For example, a refinery in Wilmington, California could buy offset
6 credits from trees planted in Idaho instead of making actual reductions at the facility. Buying
7 allowances and offsets deprives communities of co-pollutant emission reductions that come
8 with reducing greenhouse gases on-site.

9 CARB first proposed Cap and Trade in the Scoping Plan.¹⁷ During the process of
10 preparing the Scoping Plan, EJAC advised against a cap and trade system for various efficacy
11 and justice reasons.¹⁸ During the public comment period, the Complainants, along with EJAC
12 and others, commented on the Scoping Plan and asked CARB to reject Cap and Trade scheme
13 because of the effect on low-income communities and communities of color.¹⁹ Ignoring these
14 comments, on December 12, 2008, CARB adopted the Scoping Plan, which included Cap and
15 Trade as the State's main strategy.

16 The Complainants, along with others, brought an action against CARB alleging that
17 the Scoping Plan violated AB 32 and the California Environmental Quality Act ("CEQA").²⁰
18 The Superior Court held that CARB violated CEQA when it (1) failed to meaningfully

19
20 25,000 metric tons of carbon dioxide per year, electricity generation facilities, natural gas,
21 propane and transportation fuel providers are covered under Cap and Trade regulation. *See Id.*
22 at § 95811(a)-(b) (covered entities), § 95812(c)(1) (defining the "applicability threshold").
The facilities that are covered under Cap and Trade will be hereafter referred to as "Cap and
Trade facilities."

23 ¹⁵*Id.* at Subarticle 8 §§95870 *et seq.*

24 ¹⁶*Id.* at Subarticle 11 §§ 95870 *et seq.*

25 ¹⁷AB32 required CARB to prepare a Scoping Plan to outline the actions it would take to
achieve reductions in greenhouse gas emissions. Health & Safety Code § 38561.

26 ¹⁸*See* Recommendations on DRAFT AB 32 Scoping Plan (October 1, 2008) available at
http://www.arb.ca.gov/cc/ejac/ejac_comments_final.pdf.

27 ¹⁹*See* EJAC Comment Letter, *supra* note 13; Public comments submitted to CARB can be
found at <http://www.arb.ca.gov/cc/scopingplan/document/scopingplandocument.htm>.

28 ²⁰*AIR, et al. v. CARB, et al.*, Case No. CPF-09-509562 (June 10, 2009).

1 consider alternatives to Cap and Trade when adopting the Scoping Plan; and (2) began
2 implementing the Scoping Plan before it had responded to comments or finalized its
3 approval.²¹ The court ordered CARB to perform a new Alternatives Analysis and enjoined
4 CARB from further work on Cap and Trade until the analysis had been completed.²² CARB
5 vehemently opposed the court's decision and convinced the Court of Appeal to stay the
6 injunction, claiming that harm to the environment would be irreparable unless CARB could
7 implement Cap and Trade starting on January 1, 2012.²³ Five days after receiving the stay,
8 CARB Chairman Mary Nichols announced that CARB would defer implementation to
9 January 1, 2013.²⁴ CARB then continued to develop Cap and Trade, while it simultaneously
10 reviewed alternatives. On August 24, 2011, CARB presented a "revised" alternatives analysis
11 to the public. Not surprisingly, the analysis of alternatives was insufficient and disingenuous
12 because CARB never stopped its march towards Cap and Trade. Again, Complainants and
13 others urged CARB not to adopt a plan that included Cap and Trade because of the
14 inequalities in the program.²⁵ CARB ignored the public comments and voted to re-approve
15 the same Scoping Plan, with Cap and Trade included.²⁶

16 The Superior Court denied the Petition for Writ of Mandate with respect to the AB 32
17 causes of action, which alleged that the Scoping Plan violated Health & Safety Code § 38561
18 because the Plan did not recommend measures to meet AB 32's maximum technologically
19 feasible and cost-effective standard, and failed to evaluate the total costs and benefits of the
20 Plan on public health, including the effects of Cap and Trade on communities near Cap and
21 Trade facilities. That appeal is pending in the California First District Court of Appeals.

23 ²¹*Id.*, Judgement (May 20, 2011).

24 ²²*Id.*

25 ²³CARB v. AIR, *et al.*, California Court of Appeal, 1st District, Case No. A132165.

26 ²⁴Margot Roosevelt, *California delays its carbon trading program until 2013*, LA Times
27 (June 30, 2011), available at
<http://www.latimes.com/news/local/la-me-cap-trade-20110630,0,2108482.story>.

28 ²⁵Public comments, *supra* note 19.

²⁶Resolution No. 11-27, CARB, Regular Board Meeting, August 24, 2011.

1 On December 16, 2010, CARB had a public hearing on its proposed Cap and Trade
2 regulation. At this hearing, Complainants informed the Board that Cap and Trade would
3 violate Title VI and urged the Board not to go forward with the regulation.²⁷ Despite the
4 numerous comments on the burdens of Cap and Trade on communities of color, the Board
5 voted to adopt the Cap and Trade program.²⁸ From the outset, CARB has promoted a Cap and
6 Trade system and has refused to genuinely review, in good faith, alternatives or take seriously
7 Complainants' Title VI claims of disparate and adverse impacts on communities of color in
8 California.

9 VI. ARGUMENT

10 Title VI of the Civil Rights Act of 1964 provides:

11 No person in the United States shall, on the ground of race, color, or national origin,
12 be excluded from participation in, be denied the benefits of, or be subjected to
discrimination under any program or activity receiving federal financial assistance.²⁹

13 CARB, a recipient of federal financial assistance from EPA, has violated Title VI by its
14 decision to approve Cap and Trade.³⁰ EPA's implementing regulations prohibit recipients
15 from making decisions which have the *effect* of subjecting individuals to discrimination
16 because of their race, color or national origin.³¹ CARB's duty to comply with Title VI is not
17 limited to only those programs that are funded by EPA. "Program or activity" is defined as
18 "all the operations of" a department, agency, special purpose district or other instrumentality
19

20 ²⁷See CARB December 16, 2010 Hearing Transcript, 319-320 (Comments of Brent Newell),
21 322-324 (Comments of Caroline Farrell), *available at*
22 <http://www.arb.ca.gov/board/mt/2010/mt121610.pdf>. Relevant part attached as Exhibit 3; *See*
23 *also* CRPE Letter Re: Comments on Greenhouse Gas Cap and Trade Regulation, December
14, 2010. Attached as Exhibit 4.

24 ²⁸Resolution No. 10-42, CARB Regular Board Meeting, December 16, 2010. The regulation
25 was modified in July 2011 and September 2011. CARB approved the final version on
26 October 26, 2011 (Resolution No. 11-32); *See* CRPE Letter Re: Comments on 15-Day
Modifications to Greenhouse Gas Cap and Trade Regulation, August 11, 2011. Attached as
Exhibit 5.

27 ²⁹Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d.

28 ³⁰EPA's regulations can be found at 40 C.F.R. Part 7.

³¹40 C.F.R. §§ 7.35(b) - (c).

1 of a State or of a local government.³² CARB is a program or activity under the Act and thus,
2 all its decisions must comply with the requirements of Title VI.

3 CARB's decision to approve Cap and Trade violates its statutory and regulatory duties
4 under Title VI. CARB's action has the potential to exacerbate existing adverse environmental
5 impacts in communities of color throughout California and creates a substantial adverse effect
6 on these communities. The offsets and allowance trading in Cap and Trade denies
7 communities sited around Cap and Trade facilities the benefit of co-pollutant emissions
8 reductions and, in some instances, could cause an increase in emissions. As discussed in
9 Section B, *infra*, the impact of Cap and Trade will fall disproportionately on communities of
10 color located around these facilities in violation of Title VI.

11 **A. The Cap and Trade Regulation Will Have Significant Adverse Health Impacts.**

12 In determining adverse impacts for the *Angelita C.* Title VI complaint,³³ OCR
13 considered exposure levels and stated that the nature and severity of the potential health
14 effects, the frequency of occurrence, and the estimated numbers of persons potentially affected
15 could also be factors in finding an adverse impact.³⁴ The *Investigative Report* looked to the
16 Clean Water Act enforcement guidance to support the criteria that an exceedance of a

17
18 ³²42 U.S.C. § 2000d-4a

19 ³³This preliminary finding, with its supportive investigative documents, represents the sole
20 authority on the application of the Title VI methodologies provided in EPA's Draft Guidelines
21 at this time. Accordingly, we adhere to *Angelita C.* to support our findings of adverse and
22 disparate impact demonstrated in this Complaint. *See Preliminary Finding*, Title VI
23 Complaint 16R-99-R9, U.S. EPA Office of Civil Rights, Apr. 22, 2011; *Investigative Report*
24 *for Title VI Administrative Complaint File No. 16R-99-R9*, U.S. EPA Office of Civil Rights,
25 Aug. 25, 2011 (hereinafter, *Investigative Report*); *see also Draft Title VI Guidance for EPA*
26 *Assistance Recipients Administering Environmental Permitting Programs (Draft*
27 *Administration Guidance) and Draft Revised Guidance for Investigating Title VI*
28 *Administrative Complaints Challenging Permits (Draft Investigation Guidance)*, 65 Fed. Reg.
39649, 39679-39680 (June 27, 2000). This draft guidance was the last document published by
EPA through what EPA termed a "robust stakeholder involvement process." As it represents
the last official Title VI policy guidance provided by EPA, even though EPA never responded
to public comments, we follow its suggested methodology in this Complaint. *See, Policies*
and Guideline, EPA Office of Civil Rights, <http://www.epa.gov/ocr/polguid.htm>.

³⁴*Investigative Report* at 16-17 referring to *Draft Investigation Guidance*, *supra* note 33.

1 concentration threshold are generally recognized as adverse under Title VI.³⁵ EPA CWA
2 enforcement guidance states:

3 An imminent harm or endangerment must only pose a *reasonable cause for*
4 *concern for the public health* or welfare in order to constitute an “imminent
5 and substantial endangerment” [T]he word “substantial” does not require
6 quantification of the endangerment (e.g., proof that a certain number of persons
7 will be exposed, that “excess deaths” will occur, or that a water supply will be
8 contaminated to a specific degree). Instead, the decisional precedent
9 demonstrates that an endangerment is substantial if there is reasonable cause
10 for concern that someone or something may be exposed to a risk of harm by a
11 release or a *threatened release* of a hazardous substance if remedial action is
12 not taken, keeping in mind that protection of the public health, welfare and the
13 environment is of primary importance. A number of factors (e.g., the quantities
14 of hazardous substances involved, the nature and degree of their hazards, or the
15 potential for human or environmental exposure) may be considered in
16 determining whether there is reasonable cause for concern, but in any given
17 case, one or two factors may be so predominant as to be determinative of the
18 issue.³⁶

19 The offsets and allowance trading allowed by Cap and Trade pose a reasonable cause for
20 concern that 15,492,631 people, or 45.9% of the population of California residents, that live
21 within a 6 mile radius of Cap and Trade facilities, may be exposed to a continued or increased
22 level of harmful co-pollutant emissions.³⁷ As described below, co-pollutants emitted from
23 Cap and Trade facilities cause significant health effects for the surrounding population. The
24 exposure levels, nature and severity of the potential health effects, and the estimated number
25 of people affected by Cap and Trade facilities’ co-pollutants demonstrates a significant
26 adverse impact. In addition, EPA must consider the significant adverse impacts of Cap and
27 Trade in the context of existing environmental injustice and social inequality. This
28 cumulative adverse impact of Cap and Trade, in addition to other adverse effects born by
communities living near Cap and Trade facilities, further demonstrates the significant adverse
impact of Cap and Trade.

35 *Id.* at 26.

36 *Id.* at 26-27 citing EPA, *Guidance on Use of Section 504, the Emergency Powers Provision of the Clean Water Act*, 1993 (internal citations omitted) (emphasis added).

37 *Minding the Climate Gap* at 10, Table 1.

1 **1. Co-pollutants cause severe health impacts to surrounding communities.**

2 Industrial sources account for roughly 20 percent of the total global warming pollution
3 emitted in California.³⁸ Facilities such as power plants, cement plants, petroleum refineries
4 and bio-fuel facilities also emit significant quantities of co-pollutants. The co-pollutants
5 include, but are not limited to, criteria air pollutants³⁹ such as particulate matter (PM10 and
6 PM2.5) and ground level ozone (smog) precursors, such as nitrogen oxides (NOx) and volatile
7 organic compounds (VOC)⁴⁰, and toxic air contaminants (or hazardous air pollutants).⁴¹ The
8 residents of the communities surrounding these facilities are the most severely impacted by
9 the health effects of the co-pollutant emissions.

10 The criteria co-pollutants cause severe public health effects, such as asthma, cardio
11 pulmonary illnesses, and premature death. Ozone pollution can lead to inflammation and
12 irritation of the tissues lining the airways, which can cause spasms and contractions, reducing
13 the amount of air that can be inhaled. Ozone in sufficient doses can also increase the
14 permeability of lung cells, making them more susceptible to damage from environmental
15 toxins and infection. Exposure to particulate matter (“PM”) aggravates a number of
16 respiratory illnesses, decreases lung function and contributes to cardio pulmonary illnesses,
17 such as heart attacks and strokes, and may even cause premature death in people with existing
18 heart and lung disease. Both long term and short term PM exposure can have adverse health
19 impacts. Particulate matter less than 2.5 microns in diameter (PM2.5) poses an increased risk
20 because it can deposit deep within lungs and contains substances that are particularly harmful

22 ³⁸Diane Bailey, *et al.*, *Improving Air Quality and Health by Reducing Global Warming*
23 *Pollution in California*, June 2008, available at
24 <http://www.nrdc.org/globalWarming/boosting/contents.asp>, 10.

25 ³⁹Criteria air pollutants are pollutants for which a health based National Ambient Air Quality
Standard (NAAQS) has been set by the U.S. EPA.

26 ⁴⁰Many VOCs, such as benzene and methanol, are both VOCs and toxic compounds.

27 ⁴¹Toxic air contaminants are pollutants identified by CARB which pose adverse health effects
at extremely low levels. *See* Health and Safety Code § 39650 *et seq.* Hazardous air pollutants
28 are listed in section 112(b) of the Federal Clean Air Act, 42 U.S.C. § 7412(b), and emission
standards are set by U.S. EPA or by permitting authorities on a case-by-case basis.

1 to human health. Ozone and PM exposure are associated with increases in hospital
2 admissions and emergency room visits, premature death, and increases school and work
3 absenteeism. The elderly, children, adolescents, and adults who exercise or work outdoors are
4 most susceptible to adverse impacts from exposure.⁴²

5 California cities and counties consistently rank highest in exposure to short and long
6 term PM2.5 exposure and ozone exposure.⁴³ The top five most polluted U.S. cities for long
7 term and short term PM2.5 pollution are in California, almost exclusively in the San Joaquin
8 Valley.⁴⁴ California also holds the top five spots for most polluted counties with regard to
9 short term PM2.5 pollution, and seven of the top 10 counties for long term pollution.⁴⁵ The
10 same holds true for ozone pollution: 9 of the top 10 cities are in California and the top 10
11 counties are all in California.⁴⁶

12 Exposure to these criteria co-pollutants exceed the NAAQS in many California air
13 basins where Cap and Trade facilities are located.⁴⁷ The San Joaquin Valley and South Coast
14 Air Basin failed to attain the 1-hour ozone standard and are extreme non-attainment areas for
15
16
17

18 ⁴²See EJAC comment letter, *supra* note 13, at 9 (reiterating that “Particulate Matter [] is a
19 co-pollutant of every fossil-fuel combustion process. Particulate matter not only contributes
20 to climate change, it also causes staggeringly high rates of illness and death in communities of
21 color and low income communities around the state.”); *Facts about Particulate Matter
22 Mortality: New Data Revealing Greater Dangers from PM2.5*, CARB (2008) available at
23 http://www.arb.ca.gov/research/health/pm-mort/pm-mort_fs.pdf (stating that “ARB staff
24 examined numerous studies from around the world and confirmed that even at very low levels
25 of exposure, there exists a strong link between PM2.5 air pollution and many adverse health
26 effects,” including “premature deaths, primarily from heart attacks, strokes, and other
27 cardiovascular causes.”); American Lung Association, *State of the Air 2012* available at
28 <http://www.stateoftheair.org/2012/assets/state-of-the-air2012.pdf>.

⁴³See *State of the Air 2012* at 14-18.

⁴⁴*Id.* at 14-15.

⁴⁵*Id.* at 17-18.

⁴⁶*Id.* at 14, 17.

⁴⁷See Currently Designated Nonattainment Areas for All Criteria Pollutants available at
<http://www.epa.gov/oaqps001/greenbk/anc1.html> (last accessed 6/5/12).

1 the 1997 8-hour ozone standard.⁴⁸ The Bay Area Air Quality Management District is in
2 marginal nonattainment for the 1997 8-hour ozone standard.⁴⁹ The San Joaquin Valley, South
3 Coast, and Bay Area Air Quality Management District are in non attainment for the short and
4 long term 1997 and 2006 PM2.5 NAAQS, and the South Coast is in serious non-attainment
5 for PM10.⁵⁰

6 Toxic air contaminants and hazardous air pollutants are co-pollutants emitted by Cap
7 and Trade facilities that also cause serious health effects. According to CARB, health effects
8 from toxic air contaminants “may occur at extremely low levels and it is typically difficult to
9 identify levels of exposure which do not produce adverse health effects.”⁵¹ Hazardous air
10 pollutants (or air toxics) are known or suspected of causing cancer, developmental effects, or
11 birth defects. Examples of toxic co-pollutants emitted from Cap and Trade facilities include,
12 but are not limited to ammonia, arsenic, benzene, formaldehyde, hexavalent chromium, and
13 lead.

14 **2. Offsets and trading maintain or increase co-pollutant emissions in**
15 **surrounding communities.**

16 Reducing greenhouse gas emissions on-site has the added benefit of reducing co-
17 pollutant emissions. These direct reductions would have particularly important health impacts
18 to communities that surround Cap and Trade facilities. As an example, the ExxonMobil
19 refinery in Torrance, CA emits 352.2 tons of asthma and cancer causing particulate matter
20 each year and nearly 800,000 people live within six miles.⁵² Reducing the greenhouse gas
21 emissions at the Torrance facility would reduce the PM emission as well. However, Cap and
22

23 ⁴⁸76 Fed. Reg. 82133 (Dec. 30, 2011) (1-hour failure to attain); 76 Fed. Reg. 57846, 57847
24 (September 16, 2011) (San Joaquin 8-hour); 76 Fed. Reg. 57872, 57873 (September 16, 2011)
(South Coast 8-hour).

25 ⁴⁹*Supra* note 47.

26 ⁵⁰76 Fed. Reg. 69896 (Nov. 9, 2011) (San Joaquin Valley); 75 Fed. Reg. 71294, 71295
(November 22, 2010) (South Coast); *supra* note 47.

27 ⁵¹ARB Glossary of Air Pollution Terms, definition of Toxic Air Contaminant (TAC),
available at <http://www.arb.ca.gov/html/gloss.htm#caaqs>.

28 ⁵²*Minding the Climate Gap* at 1.

1 Trade allows polluting entities to either reduce their greenhouse gas emissions on-site or
2 continue to pollute and buy allowances from another Cap and Trade facility or offsets from an
3 unregulated entity.⁵³ While supposedly all of these options will decrease California's overall
4 greenhouse gas emissions, only one will decrease the co-pollutant emissions for the
5 surrounding communities: reducing emissions at the source. Under Cap and Trade, if a
6 facility chooses to buy allowances or offsets, they do not need to reduce their own emissions
7 on-site. Therefore, the surrounding communities will not see any decrease in co-pollutants.
8 Moreover, should a Cap and Trade facility expand its capacity or otherwise increase
9 emissions, that facility may also buy allowances or offsets to comply with the cap. In this
10 case, nearby communities would see an increase in co-pollutant emissions. Given the
11 exceedances of the health based standards for criteria co-pollutants and the health effects of
12 toxic co-pollutants described above, Cap and Trade inflicts a significant adverse impact.

13 **3. The Clean Air Act does not protect communities from co-pollutant**
14 **emissions.**

15 Comments regarding the harms posed by co-pollutants have been brought before
16 CARB throughout the creation and implementation of Cap and Trade. Often CARB has
17 responded that AB32 is about greenhouse gas reductions and that the Clean Air Act protects
18 communities from co-pollutants. This simply is not true. First, AB32 specifically directs
19 CARB to "consider the potential for direct, indirect, and cumulative emission impacts from
20 [market-based compliance mechanisms], including localized impacts in communities that are
21 already adversely impacted by air pollution" and to "design any market-based compliance
22 mechanism to prevent any increase in the emissions of toxic air contaminants or criteria air
23 pollutants."⁵⁴ Second, the Clean Air Act does not protect communities from co-pollutant
24 impacts. CARB cannot rely on the Clean Air Act as a backstop to prevent increased co-
25 pollutant impacts when new or modified major stationary sources (which are also Cap and
26

27 ⁵³Cal. Code Regs. tit. 17 §§ 95870 *et seq.*

28 ⁵⁴Health and Safety Code §§ 38570(b)(1)-(2).

1 Trade facilities) increase hazardous air pollutant or criteria pollutant emissions in a
2 community. EPA has access to numerous permits throughout the San Joaquin, South Coast
3 and Bay Area air basins that will demonstrate the Clean Air Act's inability to protect local
4 communities from co-pollutant emissions.⁵⁵ Hazardous air pollutant regulations (Section 112)
5 and New Source Review (as codified in Part D of Title I of the Clean Air Act) allow increases
6 in emissions. Those sections do not require zero emissions but, rather, impose technology
7 based emissions limits.⁵⁶ Section 112 allows any emissions beyond MACT. Moreover, under
8 New Source Review, a major stationary source purchases offsets to mitigate the pollution not
9 reduced by BACT (or LAER) under an almost identical scheme as Cap and Trade: the major
10 source buys offsets from another source in the air basin and the local community gets stuck
11 with the increase in criteria pollutant emissions.⁵⁷ The California Clean Air Act likewise does
12 not require zero emissions of toxic or criteria pollutant emissions for new or modified
13 stationary sources. Therefore, if a new source or expanding source increases pollution in a
14 community, Cap and Trade allows it, and the Clean Air Act only requires emissions controlled
15 to the extent technologically feasible. CARB had the opportunity to reduce greenhouse gases
16 and harmful co-pollutant emissions for communities living near Cap and Trade facilities, but
17 Cap and Trade does not capitalize on that opportunity to the detriment of those communities.

19 ⁵⁵Two examples are the Avenal Power Center in the San Joaquin Valley and the Ultramar
20 Wilmington Refinery in the South Coast. In Avenal, even after controls, the approved project
21 will emit 12 tons per year of toxics. *See* Notice of Final Determination of Compliance,
22 Project Number: C-1100751 - Avenal Power Center, LLC (08-AFC-01), 60 (December 17,
23 2010), relevant portions attached as Exhibit 6. In Wilmington, the refinery will have
24 significant air impacts and hazardous air pollution emissions but it will comply with existing
25 air quality regulations. *See* Notice of Preparation of Draft Environmental Impact Report,
26 Ultramar, Inc. Wilmington Refinery Proposed Cogeneration Project, 2-8, 2-27 (March 30,
27 2012), *available at* <http://aqmd.gov/ceqa/nonaqmd.html>. Relevant portions attached as
28 Exhibit 7.

26 ⁵⁶42 U.S.C. §§ 7412(d) (Maximum Achievable Control Technology (MACT)) and 7503(d)
(Best Available Control Technology (BACT) or Lowest Achievable Emissions Rate (LAER)).

27 ⁵⁷*See, e.g.* San Joaquin Valley Air Pollution Control District Rule 2201, South Coast Air
28 Quality Management District Regulation XIII; *see also* 42 U.S.C. §§ 7503(c) and 7511a;
Avenal Permit, *supra* note 55, at 38-48 (offsets required for NO_x, VOC, and PM₁₀).

1 **4. Cap and Trade exacerbates the cumulative environmental and social**
2 **inequality in communities living near Cap and Trade facilities.**

3 Cap and Trade does not exist in theoretical isolation, but rather adds additional impacts
4 to communities already suffering existing environmental and social inequalities which
5 cumulatively affect the health and well-being of people of color. This cumulative burden is
6 thus further exacerbated by Cap and Trade's deprivation of potential co-pollutant reductions
7 and localized increases in co-pollutants. Given the factors articulated in *Angelita C.* and the
8 *Investigative Guidance*, cumulative impacts are relevant to whether Cap and Trade is a
9 significant adverse impact.⁵⁸ These cumulative impacts include, but are not limited to,
10 localized and regional toxic and conventional air pollution, exposure to additional toxins in
11 food and water, and social inequalities that exacerbate public health outcomes, such as
12 unequal access to healthy food (food deserts) and unequal access to health care that plague
13 low-income communities of color such as those near Cap and Trade facilities. Such
14 cumulative health and social vulnerabilities in the San Joaquin Valley and South Coast Air
15 Basin have been exceptionally well documented in the scientific literature and further
16 establish the significant adverse impact of Cap and Trade.⁵⁹

17 **B. The Cap and Trade Regulation Disproportionately Impacts People of Color in**
18 **California.**

19 The EPA *Draft Revised Guidance for Investigating Title VI Administrative Complaints*
20 *Challenging Permits (Investigative Guidance)* provides five steps for determining disparate
21 impact.⁶⁰ These steps include 1) identifying the affected population, 2) identifying the
22 comparison population, 3) characterizing the demographics of the affected population, 4)
23

24 ⁵⁸See *Draft Investigation Guidance*, 65 Fed. Reg. at 39678.

25 ⁵⁹See James L. Sadd, *et al.*, *Playing it Safe: Assessing Cumulative Impact and Social*
26 *Vulnerability through an Environmental Justice Screening Method in the South Coast Air*
27 *Basin, California*, Int. J. Environ. Res. Public Health, 8, 1441-1459 (2011); Jonathan London,
et al., *Land of Risk, Land of Opportunity: Cumulative Environmental Vulnerabilities in*
28 *California's San Joaquin Valley*, UC Davis Center for Regional Change, 12 (Nov. 2011).

⁶⁰*Draft Investigation Guidance*, 65 Fed. Reg. at 39681-39682.

1 conducting a disparate impact analysis, and 5) determining the significance of this disparity.
2 EPA employed this procedure to support its preliminary finding of disparate impact for
3 *Angelita C.*⁶¹

4 These five steps, as addressed below, demonstrate that people of color in California
5 face a significant disparate impact from co-pollutant emissions from Cap and Trade facilities
6 compared to the state's non-Hispanic white population. Furthermore, the pattern of disparate
7 impact holds across all major racial and ethnic subpopulations in California. While this
8 disparity is greatest among the African-American population, it is also significant for the
9 state's Latino and Asian/Pacific Islander populations, as well as for recent immigrants. In
10 implementing Cap and Trade, CARB will entrench these significant disparities in clear
11 violation of Title VI.

12 **1. The affected population is residents of California living within six miles of**
13 **a Cap and Trade facility.**

14 For the purposes of this Complaint, we contend that "affected population"⁶² is
15 residents of California living within 6 miles of a Cap and Trade facility known to emit large
16 quantities of both carbon dioxide and co-pollutants. A total of 15,492,631 people, or 45.9% of
17 the population of California, live within six miles of such a facility.⁶³ For the purpose of this
18 Complaint, we use a six-mile radius as a threshold and indicator of those at greatest risk of
19 co-pollutant exposure from Cap and Trade facilities. The California Energy Commission
20

21 ⁶¹See *Preliminary Finding*, *supra* note 33; Jonathan Cohen & Arlene Rosenbaum, *Exposure*
22 *Assessment and Disparity Analysis for Administrative Complaint 16R-99-R9*, 25-51, Apr. 21,
23 2011 (Hereinafter, *Disparity Analysis*) (utilizing the following steps in its "approach to
24 disparity analysis": "identification of affected and comparison populations," "comparison of
25 demographic characteristics of affected versus comparison population," "disparity assessment
results"); *Investigative Report* (employing these steps to arrive at its finding of significant
disparity).

26 ⁶²*Disparity Analysis* at 26 (explaining that "OCR defines the *affected population* as the
27 population with a predicted exposure of interest from the environmental stressors at issue.");
Draft Investigation Guidance at 39681.

28 ⁶³Unless otherwise specified, data and statistics discussed in this section are drawn from
Minding the Climate Gap, *supra* note 2.

1 similarly utilizes a six-mile distance to determine whether environmental justice communities
2 are located nearby proposed power plants.⁶⁴

3 The size of the affected population underscores both the importance of this issue and
4 the significance of the disparate impact findings, discussed below. The fact that the affected
5 population is composed of nearly half of the total population of California minimizes the
6 chance that the disparities illustrated below are due to chance.

7 California hosts over 150 Cap and Trade facilities intensively emitting greenhouse
8 gases, including petroleum refineries, cement plants, and power plants.⁶⁵ As they emit
9 greenhouse gases, each of these facilities releases differing amounts of toxic and criteria
10 co-pollutants, with significant adverse health effects discussed in Section IV.A, *supra*.
11 Furthermore, many communities within the affected group are burdened by exposures from
12 more than one polluting facility.

13 To account for aggregate exposures, *Minding the Climate Gap* assessed the relative
14 burden of co-pollutant emissions born by the affected population. This assessment revealed
15 that 6.9% of Californians (2,317,884 people) experience the highest level of co-pollutant
16 emissions within the 6-mile reference area, 32.4% (10,940,640 people) of the population of
17 California experience a middle range of emissions, and 6.6% (2,234,107 people) experience
18 relatively low emissions compared to these previous two groups.

19 Though power plants are the most numerous among these facilities, they average a
20 much lower level of co-pollutant emissions than petroleum refineries and cement plants.
21 Cement plants are particularly dirty in terms of their co-pollutant emissions: only 13 plants
22 account for 4,513 tons of PM10 emitted per year. In addition, 25 refineries spew a further
23

24 ⁶⁴*Id.* at 8.

25 ⁶⁵Data on greenhouse gas and co-pollutant emissions is drawn from the 2006 CARB
26 Emissions Inventory and CARB's 2008 annual release under California's mandatory GHG
27 Reporting Program. *Minding the Climate Gap* at 5. Demographic and socioeconomic data is
28 taken from the 2000 U.S. Census, using the demographically and economically homogenous
census block groups as the unit of analysis. *Id.* at 5, 7. EPA recommends the use of census
blocks groups in conducting disparity assessments. *Draft Investigation Guidance* at 39681.

1 2,995 tons of PM10 while 108 power plants emit an additional 2,395 tons. Along with PM10,
2 each of these facilities emit similar levels of the particularly potent PM2.5, as well as sulfuric
3 acid, nitrous oxides, and toxic pollutants.⁶⁶ This heavy total load of pollutants, generating
4 immediate and severe localized health impacts, is predominantly born by the affected
5 population within a 6-mile radius of these facilities.

6 **2. The comparison population is the population of California residing**
7 **outside of the six mile range of a Cap and Trade facility.**

8 EPA defines the comparison population for a disparity analysis as “the population
9 selected for comparison with the affected population.”⁶⁷ The OCR uses the comparison
10 population in Title VI investigations “to evaluate whether there is a significant difference
11 between [comparison and affected populations] with respect to demographic characteristics or
12 degree of impact.”⁶⁸ According to OCR’s disparate impact analysis in *Angelita C.*, the
13 comparison population should represent a “group of people that could have been equally likely
14 to be affected if the recipient’s actions had resulted in alternative location.”⁶⁹ If possible, the
15 comparison population should not overlap with the affected population in order to create two
16 “statistically independent” groups for disparity analysis.⁷⁰

17 In this Complaint, we contend that the comparison population is the total population of
18 California residing outside of the six mile zone of impact of the facilities subject to Cap and
19 Trade. Exposure to co-pollutants diminishes substantially beyond the six mile range of a
20 facility.⁷¹ Though emissions dispersion patterns may extend exposures to some degree beyond
21

22 ⁶⁶See *Minding the Climate Gap* at 1. For CARB’s inventory of co-pollutant emissions from
23 major stationary sources, including CO, PM10, PM2.5, NOx, and SOx, see *2008 Estimated*
24 *Annual Average Emissions: Stationary Sources*, CARB,
25 [http://www.arb.ca.gov/app/emsinv/emssumcat_query.php?F_YR=2008&F_DIV=-](http://www.arb.ca.gov/app/emsinv/emssumcat_query.php?F_YR=2008&F_DIV=-4&F_SEASON=A&SP=2009&F_AREA=CA#stationary)
[4&F_SEASON=A&SP=2009&F_AREA=CA#stationary](http://www.arb.ca.gov/app/emsinv/emssumcat_query.php?F_YR=2008&F_DIV=-4&F_SEASON=A&SP=2009&F_AREA=CA#stationary).

26 ⁶⁷*Disparity Analysis* at 29.

27 ⁶⁸*Id.*

28 ⁶⁹*Id.*

⁷⁰*Id.*

⁷¹*Minding the Climate Gap* at 16.

1 this range, we follow *Minding the Climate Gap* and the California Energy Commission in
2 assuming, for the purposes of this Complaint only, that co-pollutant exposures are
3 comparatively negligible beyond this identified six mile zone of impact.⁷²

4 The use of this particular comparison population provides our disparity analysis with
5 two substantial strengths. First, as the comparison population does not overlap at all with the
6 affected population, we are able to compare two “statistically independent” populations.
7 Doing so bolsters and simplifies our statistical analysis as well as future analyses conducted to
8 investigate this Complaint. Second, as explained above, we are able to employ a comparison
9 population that closely matches the affected population in size, as the comparison population
10 comprises 54.1% of the total population of California.⁷³ The similarity in, and large size of,
11 the two populations minimize the possibility that identified disparities could be due to chance.

12 **3. The affected population is disproportionately people of color.**

13 The population of California residing within six miles of a Cap and Trade facility (the
14 affected population) is composed of 62% people of color compared to only 38% non-Hispanic
15 whites.⁷⁴ By contrast, the population residing outside of the six-mile zone of impact (the
16 comparison population), without the heavy burden of co-pollutant exposures, is 46% people of
17 color and 54% non-Hispanic white.⁷⁵

18 The disproportionate presence of people of color within six-miles of a facility holds
19 across all major racial and ethnic groups. African Americans are the most hyper-represented
20 within the area of impact: their share of the population within six miles of a facility (8.6%) is
21 almost twice their share outside of the six-mile range (4.6%). The Latino population also
22 makes up 37.5% of the population within six miles of a facility versus only 28.1% outside of
23 the range, while Asian/Pacific Islanders comprise 12.6% of the population within six miles of
24 a facility compared to 9.7% outside of the range. Recent immigrants, differentiated by their
25

26 ⁷²*Id.* at 8.

27 ⁷³*Id.* at 10, table 1.

28 ⁷⁴*See* Table 1; Exhibit 1.

⁷⁵*Id.*

national origin, are also overrepresented in the zone of co-pollutant impact. They make up 21.4% of the population within six miles of a facility but only 15.4% of the total comparison population outside of the six-mile range.

Together these figures illustrate a consistent pattern in California whereby each of these minority racial, ethnic, and immigrant groups live with substantially heavier exposures to co-pollutants from Cap and Trade facilities than their white co-patriots.

Table 1: Average Characteristics by Distance from a Facility

	< Half Mile	< 1 Mile	< 2.5 Miles	< 5 Miles	< 6 Miles	> 6 Miles
Total Population	93,362	575,014	4,368,581	12,844,279	15,492,631	18,226,753
% California Population	0.3%	1.7%	13.3%	38.8%	45.9%	54.1%
Non-Hispanic White	42.6%	41.2%	37.4%	37.5%	38.0%	54.0%
People of Color	57.4%	58.8%	62.6%	62.5%	62.0%	46.0%
African American	8.7%	8.2%	8.3%	8.5%	8.6%	4.6%
Latino	35.0%	38.1%	40.2%	38.6%	37.5%	28.1%
Asian/Pacific Islanders	10.2%	8.9%	10.6%	12.0%	12.6%	9.7%
1980s and 1990s Immigrants	19.1%	20.3%	20.9%	21.3%	21.4%	15.4%

To further substantiate this disparate impact, we assess the relative emissions burdens borne by the affected and comparison populations.⁷⁶ Data on relative exposures is critical because proximity to a facility may not precisely correspond with a census block's actual co-pollutant exposures. As *Minding the Climate* explains, "some neighborhoods are within range of several facilities, and not all facilities emit the same amount of pollution."⁷⁷ The

⁷⁶*Id.* at 11, table 2.

⁷⁷*Id.* at 11.

1 authors produce the data displayed below by summing “up the tons of co-pollutant emissions
2 for each co-pollutant by neighborhood (block group) from all facilities within six miles” and
3 classifying them by three categories according to their level of emissions burden.⁷⁸

4 The disparities assessed above become even more pronounced when comparing the
5 relative burden of co-pollutants borne by each group.⁷⁹ As *Minding the Climate Gap* reports,

6 African Americans are *drastically overrepresented* in the High Emissions
7 group of neighborhoods, making up about 16 percent of the population - more
8 than three times their share in either the Low Emissions group of
neighborhoods or neighborhoods outside the six mile range of any facility.⁸⁰

9 Latinos, Asian/Pacific Islanders, and recent immigrant are also all overrepresented at every
10 level of emissions compared to their proportion of the comparison population.

11 Table 2: Average Characteristics of PM10 Emissions from Facilities Within 6 Miles

	High Emissions	Middle Range	Low Emissions	No Facilities Within 6 Miles
Total Population	2,317,884	10,940,640	2,234,107	18,226,753
% California Population	6.9%	32.4%	6.6%	54.1%
Non-Hispanic White	34.4%	37.7%	43.5%	54.0%
People of Color	65.6%	62.3%	56.5%	46.0%
African American	15.9%	7.8%	4.9%	4.6%
Latino	34.5%	38.8%	33.9%	28.1%
Asian/Pacific Islanders	11.7%	12.5%	14.3%	9.7%
1980s and 1990s Immigrants	18.7%	22.2%	20.2%	15.4%

23
24 As a group, people of color have their highest population representation in the most
25 severely impacted emissions range, making up 66% of the Californian population in high

26
27 ⁷⁸*Id.*

⁷⁹*See* Table 2; Exhibit 1.

28 ⁸⁰*Id.* at 11 (emphasis added).

1 emissions areas. They are also over-represented at the middle emissions range (62%) and low
2 emissions range (57%), as compared to their much lower proportion of the comparison
3 population - the state population beyond six miles of a facility (46%).

4 By contrast, non-Hispanic whites are under-represented at every emissions level and
5 over-represented in the comparison population beyond six miles of a facility. A telling mirror
6 image to the pattern for African Americans in California, non-Hispanic whites have their
7 lowest population representation at the high emission range (35%), with an increasing share of
8 the middle and low emissions range and a dramatically greater share of the comparison
9 population beyond six miles of a facility (54%).

10 In terms of health impacts, disparities are again more severe than these figures suggest.
11 *Minding the Climate Gap* reports exposures from PM10 as its unit of analysis. However, Cap
12 and Trade facilities that emit carbon dioxide also emit PM2.5 and ultrafine particular matter
13 (resulting in more severe health impacts than from PM10 exposure alone), sulfur oxides,
14 ozone forming nitrous oxides and volatile organic carbon, as well as a variety of toxic air
15 pollutants.⁸¹ Our allegations cover the disproportionate cumulative impacts of all of these
16 exposures on people of color in California. Accordingly, it is crucial that investigative action
17 by the EPA address disparate exposures and health impacts from all co-pollutants emitted by
18 Cap and Trade facilities, not just PM10.

19 **4. Co-pollutant emissions from Cap and Trade facilities inflict a disparate**
20 **impact on people of color.**

21 People of color bear a consistently higher load of co-pollutants emitted from facilities
22 that generate large amounts of carbon dioxide. People of color make up 62% of the
23

24 ⁸¹See Part VI.A, *supra*. The authors of *Minding the Climate Gap* employ PM10 as a proxy for
25 these other co-pollutants. However, they also make clear that vulnerable populations “are
26 disproportionately exposed to and impacted by many of the co-pollutants associated with
27 GHG emissions, such as NOx, PM, and emissions of other contaminants that can have
28 localized impacts,” such as air toxics. Shonkoff, et. al., *Minding the Climate Gap: Environmental Health and Equity Implications of Climate Change Mitigation Policies in California*, Environmental Justice, vol. 2, no. 4, 175 (2009).

1 population within the six-mile range of impact of a Cap and Trade facility. By contrast, they
2 make up a much lower share (46%) of the population outside the six-mile range. When the
3 actual burden of pollution borne by this population is assessed, the discrepancy becomes even
4 starker: people of color make up 66% of the state population experiencing high emissions
5 compared to 46% of the comparison population outside the six mile range and experiencing
6 negligible localized co-pollutant emissions from these facilities.

7 Figures 7 and 8 in Exhibit 1 provide visual depictions of the disparate impact of
8 co-pollutant exposures on people of color. According to *Minding the Climate Gap*, “[p]eople
9 of color experience over 70% more particulate pollution from large GHG-emitting facilities
10 within two and a half miles than non-Hispanic whites.”⁸² Much of this burden is explained by
11 the concentration of petroleum refineries in or near communities of color: “petroleum
12 refineries account for the largest portion (93%) of the state-wide...difference between the
13 emissions burden for people of color and non-Hispanic whites.”⁸³ Of the ten greenhouse
14 gas-emitting facilities in California with the greatest health impacts, eight are petroleum
15 refineries. Eight of the ten facilities “that were identified as the most disparate by
16 race/ethnicity” also rank among the top fifteen facilities in terms of severity of health
17 impacts.⁸⁴

18 The following Table (Table 3) illustrates disparate burden borne by people of color as
19 compared to non-Hispanic whites, using PM10 as the indicator.⁸⁵ By adjusting for the relative
20 size of each population group within California, we see that each ethnic or racial minority
21 group in the affected population experiences substantially greater exposures to PM10 than
22

23 ⁸²*Minding the Climate Gap* at 18, figure 7.

24 ⁸³*Id.* at figure 8.

25 ⁸⁴*Id.* at 22. For a visual depiction of the distribution of pollution-disparity across all major
26 greenhouse gas-emitting facilities in California, see *id.* at 19, figure 9. Included in *Health
Impact Assessment of a Cap-and-Trade Framework*, California Department of Public Health,
70 (2010) (hereinafter, *Health Impact Assessment*).

27 ⁸⁵ Complainants do not limit our disparate impact allegation to only PM10, and contend that
28 all co-pollutants inflict a disparate impact. Unlike EPA or the authors of *Minding the Climate
Gap*, Complainants lack the capacity to provide a statistical analysis for all co-pollutants.

1 non-Hispanic whites in the affected population. Even at closer distances to the facilities, “the
2 relative emissions burden for all people of color combined is always above that for
3 non-Hispanic whites.”⁸⁶

4 Table 3: Population Weighted Average Annual PM10 Emissions (Tons) Burden by
5 Race/Ethnicity within 6 Mile Zone of Impact

6 Non-Hispanic White	41.51
7 All People of Color	70.98
8 African American	115.03
9 Latino	66.37
10 Asian/Pacific Islander	63.57

11
12 When comparing health effects of co-pollutants, actual disparate impacts on people of
13 color are even more severe than can be captured by discrepancies in exposure alone, as a result
14 of the particular vulnerabilities of this population. As the California Department of Public
15 Health (CDPH) explained in its 2010 Health Impact Assessment of Cap and Trade,

16 [l]ow-income communities and communities of color in California are
17 disproportionately impacted by environmental exposures and have a greater
18 susceptibility to the negative health impacts of environmental risk because of
existing health and socioeconomic vulnerabilities.⁸⁷

19 Co-pollutant exposures from Cap and Trade facilities add to the tremendous
20 cumulative exposures to a variety of environmental stressors borne predominantly by people
21 of color.⁸⁸ As people of color tend to be more susceptible to health risks and have lower
22 access to services to mitigate negative health outcomes, exposures to co-pollutants are

23
24 ⁸⁶*Minding the Climate Gap* at 16.

25 ⁸⁷CDPH, *Health Impact Assessment* at 60.

26 ⁸⁸A study by researchers at UC Davis of conditions in California’s San Joaquin Valley
27 confirmed that “environmental hazards tend to be clustered around populations with high and
28 very high levels of social vulnerability.” The study also demonstrated that the percentage of
non-white residents within the Valley study area increases with increasing levels of social
vulnerability and cumulative environmental hazards. Jonathan London, *et. al.*, *Land of Risk,*
Land of Opportunity, *supra* note 59.

1 “exacerbated by poverty, poor quality housing, and insufficient health care access in these
2 communities.”⁸⁹ The resulting picture is one of stark discrepancies in both exposures and
3 health outcomes.⁹⁰

4 Moreover, as the CDPH identified, CARB’s Cap and Trade program stands to
5 exacerbate these preexisting disparities. As CDPH identified, “the distribution of these
6 impacts” from a cap-and-trade program in California “is uncertain; market-based systems are
7 designed to reduce aggregate emissions, but can be ‘distribution neutral.’”⁹¹ Because
8 “individual firms comply with the statewide cap in a manner that best fits their needs,” the
9 health and economic impacts on local communities “will vary.”⁹² If emissions-intensive
10 facilities purchase allowances and offsets, rather than reduction emissions on-site as Cap and
11 Trade allows,⁹³ Cap and Trade will cause localized pollution “to increase in some
12 communities.”⁹⁴ Such increases will deepen already severe disparate impacts of localized
13 greenhouse-gas co-pollution that communities of color live under.

14 **5. The disparate impact from Cap and Trade is significant.**

15 The disparities detailed in Section VI.B.3 are unequivocally significant for people of
16 color residing in California, as well as for all major racial and ethnic minority groups. To
17 assess significance of disparate impact findings, we follow the methodology utilized by EPA’s
18 *Investigative Report*.⁹⁵ The OCR investigation included an assessment of “whether members

20 ⁸⁹CDPH, *Health Impact Assessment* at 61.

21 ⁹⁰CDPH illustrated these disparities in both exposure and health outcome, caused by
22 underlying susceptibilities, poor access to resources, and deleterious land use patterns, for the
23 communities of Wilmington-Harbor City-San Pedro, the City of Richmond, and the San
24 Joaquin Valley. *See id.* at 59-91. Areas characterized by high levels of cumulative
25 environmental vulnerabilities tend to be “characterized by high levels of cumulative health
26 problems.” Jonathan London, *Land of Risk, Land of Opportunity*, *supra* note 59, at 18.

25 ⁹¹CDPH, *Health Impact Assessment* at 90.

26 ⁹²*Id.* at 21.

26 ⁹³*California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms*,
27 Cal. Code of Reg., Art. 5, sections 95800 *et. seq.*

27 ⁹⁴CDPH, *Health Impact Assessment* at 90.

28 ⁹⁵*See Investigative Report*, *supra* note 33.

1 of the protected population group comprise a substantially greater proportion of the affected
2 population than of the non-affected population.”⁹⁶ In evaluating the significance of disparities
3 according to this criteria, we calculate comparative disparity ratios for people of color and
4 racial and ethnic subpopulations between the affected and comparison populations. In doing
5 so, we find consistently greater proportions of people of color in the affected population than
6 in the non-affected comparison population. By contrast, we find that the non-Hispanic white
7 population comprises a significantly greater proportion of the non-affected population than of
8 the population exposed to co-pollutants.

9 Disparities are overwhelmingly significant with regards to the proportion of the
10 protected population residing within the six mile affected range of a facility. People of color
11 comprise 34.8% more of the affected population within six miles of a GHG-emitting facility
12 than of the non-affected comparison population beyond the six mile range of impact. The
13 percentage change is even more pronounced for African Americans, who make up 87% more
14 of the population inside the six-mile zone of impact than in the comparison population.
15 Latinos and Asians follow a similar pattern: they represent 33.5% and 29.9% more of the
16 population inside the zone of impact than outside. In fact, the only population that does not
17 follow this trend is non-Hispanic whites. The state population within six miles of a facility is
18 29.6% *less* non-Hispanic white than outside the six-mile range.

19 Again, the significance of these disparities increases when considering the relative
20 burden of co-pollutant emissions borne by each sub-population. People of color make up
21 42.6% more of the population in a high co-pollutant emissions range compared to the
22 percentage of people of color living beyond six miles from a cap and trade facility. In terms of
23 their co-pollutant exposure burden, African-Americans are overrepresented by an order of
24 magnitude: they comprise 245.7% more of the population experiencing high co-pollutant
25 emissions than they comprise of the population beyond the six-mile reach of a facility. The
26 discrepancies for Latinos, Asian/Pacific Islanders, and immigrants are also significant: they

27
28 ⁹⁶*Id.* at 30.

1 respectively represent 22.8%, 20.6%, and 21.4% more of the population impacted by high
2 co-pollutant emissions than their proportion of the state population beyond six miles of a
3 facility. In addition, the disparity between people of color and non-Hispanic whites is again
4 more pronounced: the population of California in high emissions zones is composed of 36.3%
5 less non-Hispanic whites than outside the six-mile radius of impact.

6 As discussed above, the significance of these disparities becomes even more acute
7 when accounting for underlying vulnerabilities of these communities to health risks from
8 environmental exposures. The significance also grows after accounting for the cumulative
9 exposure from all health-harming co-pollutants (PM2.5, ultrafine particulate matter, NOx,
10 SOx, and toxic pollutants) emitted from facilities that intensively emit greenhouse gases.
11 OCR should assess this total burden from all Cap and Trade associated co-pollutants in
12 investigative action following on this Complaint to derive a complete picture of the
13 significance and depth of adverse disparities.

14 By allowing heavily polluting facilities to trade away their co-pollutant emissions
15 reductions obligations under Cap and Trade, CARB will exacerbate these existing inequities
16 and further heighten their significance.

17 **C. There are Less Discriminatory Alternatives**

18 CARB had less discriminatory alternatives to implement AB32 before them, yet
19 CARB chose to adopt Cap and Trade.⁹⁷ For example, CARB could have decided to directly
20 regulate each facility and require greenhouse gas emission reductions. This alternative would
21 not allow facilities the option to trade pollution credits or buy offsets. By requiring emission
22 reductions at each facility site, the local impacts due to co-pollutants described above would
23 be reduced as well. Direct regulation is a less discriminatory alternative that would achieve
24 greenhouse gas reductions and protect California communities of color from the disparate and
25 adverse impacts of co-pollutant emissions caused by Cap and Trade.

26
27 ⁹⁷See EJAC letters, *supra* notes 13, 18; CARB's alternatives analysis available at
28 http://www.arb.ca.gov/cc/scopingplan/document/appendices_volume3.pdf; Public comments,
supra note 19.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VII. REMEDIES

Under EPA regulations, EPA may use any means authorized by law to obtain compliance with Title VI.⁹⁸ EPA regulations require a recipient who has previously discriminated on the basis of race to take affirmative action to provide remedies to those who have been injured by the discrimination.⁹⁹

In order to provide effective remedies for the discrimination set forth in this Complaint, EPA should require as a condition of continuing to provide federal financial assistance to CARB that the Board:

- (1) Reverse its October 2011 decision to approve the Cap and Trade regulation;
- (2) Adopt less discriminatory alternatives to meet the requirements of AB 32, such as direct regulations;
- (3) Sue to compel compliance with the law, to the extent that imposition of the foregoing remedies proves in any way to be ineffectual;
- (4) Provide complainants with copies of all documents related to the investigation, including but not limited to all correspondence to or from CARB throughout the course of the investigation, deliberation, and disposition of this Complaint; and
- (5) Notify Complainants of, and meaningfully include Complainants in, any settlement negotiations or voluntary compliance negotiations with CARB.

//
//
//
//
//
//
//

⁹⁸40 C.F.R. § 7.130(a).
⁹⁹40 C.F.R. § 7.35(a)(7).

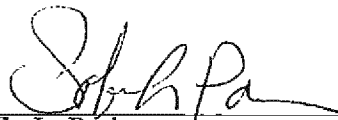
1 **VIII. CONCLUSION**

2 The California Air Resources Board's decision of October 20, 2011, which became
3 final on December 13, 2011, to adopt Cap and Trade inflicts a significant disparate and
4 adverse impact on people of color living within 6 miles of Cap and Trade facilities in
5 California. This violates Title VI and EPA's implementing regulations.

6
7 DATE: June 8, 2012

Respectfully submitted,

8 **CENTER ON RACE, POVERTY & THE**
9 **ENVIRONMENT**

10 

11
12 Sofia L. Parino
Brent Newell
Center on Race, Poverty & the Environment
47 Kearny, Suite 804
San Francisco, CA 94108
14 (415) 346-4179

15
16 Caroline Farrell
Center on Race, Poverty & the Environment
1012 Jefferson St
17 Delano, CA 93215
18 (661) 720-9140 x 302

19 Attorneys for Complainants
Coalition for a Safe Environment, Association of
20 Irrigated Residents, California Communities
Against Toxics,, Society for Positive Action, and
21 West County Toxics Coalition

22 On the Complaint:
Stephanie Safdi, CRPE Legal Intern

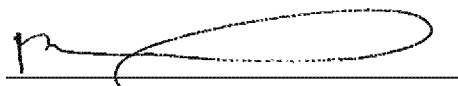
DECLARATION OF SERVICE

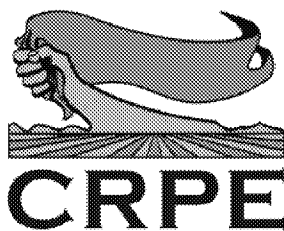
I, Marissa Alexander, declare that I am over the age of eighteen (18) and not a party to this complaint. My business address is 47 Kearny Street, Suite 804, San Francisco, CA 94108.

On June 8, 2012, I filed and served one copy of the COMPLAINT UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 on the following persons by (1) placing it in a sealed, postage-paid envelope to be sent through the U.S. mail via certified mail, return receipt requested in the regular course of business; (2) by facsimile (without exhibits); and (3) by electronic mail:

Rafael DeLeon, Director
Helena Wooden-Aguilar, External Civil Rights – Assistant Director
U.S. Environmental Protection Agency
Office of Civil Rights
Mail Code 1201A
1200 Pennsylvania Ave, NW
Washington, D.C. 20460
Fax: (202) 501-1836
Deleon.Rafael@epamail.epa.gov
Wooden-Aguilar.Helena@epamail.epa.gov

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on June 8, 2012 in San Francisco, California.


Marissa Alexander



CENTER ON RACE, POVERTY & THE ENVIRONMENT

47 KEARNY STREET, SUITE 804, SAN FRANCISCO, CA 94108 TEL 415-346-4179 FAX 415-346-8723 WWW.CRPE-EJ.ORG

August 6, 2012

Via Electronic and U.S. Mail

Rafael DeLeon, Director
Office of Civil Rights
U.S. Environmental Protection Agency
Mail Code 1201A
1200 Pennsylvania Ave NW
Washington, D.C. 20460

Re: Petition for Reconsideration; *Coalition for a Safe Environment v. California Air Resources Board*, EPA File No. 09R-12-R9

Dear Mr. DeLeon:

Complainants Coalition for a Safe Environment, Association of Irrigated Residents, California Communities Against Toxics,, Society for Positive Action, and West County Toxics Coalition (collectively "Complainants") petition EPA to accept their Title VI complaint alleging that the California Air Resources Board ("CARB") violated Title VI of the Civil Rights Act when CARB adopted the Cap and Trade regulation which, by allowing pollution trading and offsets, denies communities living near Cap and Trade facilities the benefits of co-pollutant reductions and allows increases in such pollution when facilities expand.

On July 12, 2012, the Office of Civil Rights ("OCR") erroneously rejected the complaint as not ripe. *See* Letter from Rafael DeLeon to Brent Newell and Sofia Parino, Rejection of Title VI Complaint, dated July 12, 2012 (hereafter "DeLeon Letter"), attached as Exhibit 1. OCR found that "the allegations in the complaint are speculative in nature and anticipate future events that may not occur." *Id.* at 2. OCR further found that "the actions to be taken in response to the new compliance obligations and the results of those actions are unknown and unpredictable." *Id.* at 2. OCR concluded that "a meaningful review cannot be conducted at this time" and rejected the complaint.

The Supreme Court articulated the question of ripeness as "best seen in a twofold aspect, requiring us to evaluate both the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration." *Abbott Labs. v. Gardner*, 387 U.S. 136, 149 (1967).

PROVIDING LEGAL & TECHNICAL ASSISTANCE TO THE GRASSROOTS MOVEMENT FOR ENVIRONMENTAL JUSTICE

RALPH SANTIAGO ABASCAL (1934-1997) DIRECTOR 1990-1997

LUKE W. COLE (1962-2009) EXECUTIVE DIRECTOR 1997-2009

003508 2020-10-29

As the Complaint alleged, CARB adopted a regulation that, rather than requiring all facilities to reduce greenhouse gas (and resulting co-pollutant emissions) on-site, allows all facilities to purchase allowances and offsets from a third-party, thus avoiding on-site pollution reductions. The Complaint further alleged that communities living near cap and trade facilities already suffer disparate and adverse impacts from co-pollutant emissions, and that cap and trade denies those communities a benefit of co-pollutant reductions by allowing trading. In addition, when facilities expand, they may also purchase offsets or allowances to meet their compliance obligations even when increasing greenhouse gas and co-pollutant emissions.

The adoption of the Cap and Trade regulation and the denial of benefits could not be more ripe for review. OCR concluded, without any factual analysis, that the allegations in the complaint “may not occur” and that it is “unknown and unpredictable” what actions regulated entities will take. *Id.* at 2. Cap and Trade is a reality, has been adopted by CARB, has been approved by the Office of Administrative Law, and CARB has been implementing Cap and Trade for nearly a year. The Complainants need not, and should not, wait until facilities in their communities actually purchase allowances and offsets, and use such allowances and offsets in their compliance demonstration, for this Complaint to be ripe. CARB violated Title VI by adopting a final regulation that permitted such conduct to occur.

Complainants will suffer undue hardship from OCR’s decision to reject the Complaint. Rather than having the EPA protect their right to live free of discrimination from federally-funded agencies like CARB, the Complainants apparently must endure the denial of co-pollutant reductions *before* having their complaint investigated and resolved by OCR, which could take years given OCR’s history of processing Title VI complaints. OCR has further exacerbated that hardship by failing to articulate when a complaint alleging that Cap and Trade violates Title VI would be ripe. Complainants are left in the untenable position of not knowing when OCR would consider the Complaint ripe, and simultaneously face the short 180-day limitations period in which they must file a new complaint.

OCR accepted a similar Title VI Complaint in *Communities for a Better Environment v. South Coast Air Quality Management District*, EPA File No. 10R-97-R9, which alleged that South Coast Rule 1610 allowed pollution trading that disparately and adversely affected communities of color. EPA cannot square its acceptance of that complaint – also a regulatory challenge to a trading scheme – with its unsubstantiated conclusions here that trading “may not occur” and its effects are “unknown and unpredictable.”

Even if OCR maintains that this Complaint is not ripe, it should accept the complaint, articulate which factual events must transpire, and hold the complaint in abeyance pending the fruition of those events. That was exactly the action OCR took when OCR recently accepted the complaint in *Greenaction v. San Joaquin Valley Air Pollution Control District*, EPA File No. 11R-09-R9. See Letter from Rafael DeLeon to Bradley Angel, dated August 6, 2010, attached as Exhibit 2. In *Greenaction*, the Complaint alleged that the operation of the proposed Avenal Power Plant would violate Title VI. *Id.* at 2-3. OCR accepted the complaint, but held the complaint in abeyance pending the issuance of a Prevention of Significant Deterioration permit by EPA. “OCR will hold the investigation of this allegation in abeyance because the Clean Air Act Prevention of Significant Deterioration pre-construction permit application for the Avenal power plant is pending approval from EPA and, thus, the allegations are not yet ripe for review.” *Id.* at 3.

Finally, OCR disingenuously endorses CARB's Adaptive Management Plan. The Adaptive Management Plan "requires CARB to take a range of actions to monitor co-pollutant emissions and address any unanticipated adverse impacts caused by the Cap-and-Trade regulation." DeLeon Letter at 2. OCR fails to acknowledge that the Adaptive Management Plan is a *discretionary* plan, whereby CARB stated its intent to exercise its *discretion* to determine if an adverse impact has occurred, and then will use its *discretion* to take action CARB deems appropriate. See Adaptive Management Plan, attached as Exhibit 3. Nothing in the Adaptive Management Plan guarantees that Cap and Trade will not inflict a disparate and adverse impact. Furthermore, the Adaptive Management Plan was not adopted as part of the Cap and Trade Regulation, see Cal. Code Regs. tit. 17 § 95801 *et seq.*, and is thus nothing more than CARB's non-binding intent to exercise its discretion in the future. OCR should not cite or rely on the Adaptive Management Plan as a basis for Cap and Trade's compliance with Title VI.

Complainants respectfully request that OCR (1) articulate a standard for ripeness that will inform the public when a complainant should file a Title VI complaint; and (2) accept this Complaint for investigation. Even if OCR finds that this complaint is still not ripe for review, then OCR should nevertheless accept the complaint for investigation and hold the complaint in abeyance pending the action OCR deems necessary for ripeness. Thank you for your time and courtesy.

Sincerely,



Brent Newell
General Counsel

cc: Lisa P. Jackson, EPA Administrator
USEPA Headquarters
Ariel Rios Building
1200 Pennsylvania Avenue, N. W.
Mail Code: 1101A
Washington, DC 20460

Jared Blumenfeld, Regional Administrator
EPA Region IX
75 Hawthorne Street
Mail Code: ORA-I
San Francisco, CA 94105

Mary Nichols, Chairman
California Air Resources Board
1001 I Street
Sacramento, CA 95814-2828

cc: Robert Perciasepe (by electronic mail)
Diane Thompson (by electronic mail)
Scott Fulton (by electronic mail)
Steve Pressman (by electronic mail)
Helena Wooden-Aguilar (by electronic mail)

EXHIBIT 1



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUL 12 2012

OFFICE OF
CIVIL RIGHTS

CERTIFIED MAIL #7004 2510 0004 2241 6398
RETURN RECEIPT REQUESTED

In Reply Refer to:
EPA File No. 09R-12-R9

Brent Newell
Attorney
Center on Race, Poverty and the Environment
47 Kearny Street, Suite 804
San Francisco, CA 94108-5528

Sofia Parino
Attorney
Center on Race, Poverty and the Environment
47 Kearny Street, Suite 804
San Francisco, CA 94108-5528

Re: Rejection of Title VI Administrative Complaint

Dear Mr. Newell and Ms. Parino:

The United States Environmental Protection Agency (EPA) Office of Civil Rights (OCR) has reviewed your complaint filed on behalf of the Coalition for a Safe Environment, the Association of Irrigated Residents, California Communities Against Toxics, the Society for Positive Action, and the West County Toxics Coalition. OCR received the complaint on June 8, 2012. The complaint alleges that the California Air Resources Board (CARB) violated Title VI of the Civil Rights Act of 1964, as amended (Title VI), 42 U.S.C. §§ 2000d *et seq.*, and EPA's nondiscrimination regulations at 40 C.F.R. Part 7 in approving the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms Regulation, Including Compliance Offset Protocols (Cap-and-Trade program). OCR is responsible for conducting a preliminary review of complaints alleging discrimination by programs or activities that receive financial assistance from EPA for acceptance, rejection, or referral to another federal agency.

CARB issued regulations implementing the Cap-and-Trade program on October 20, 2011, pursuant to AB 32, the California Global Warming Solutions Act. That Act established statewide 2020 greenhouse gas (GHG) emissions limits and directed CARB to develop a plan to reduce GHG emissions to the statewide limit of 1990 levels by 2020. Enforceable compliance obligations for GHG emissions from affected sources will begin on January 1, 2013.

OCR finds that this complaint is not ripe for review. The allegations in the complaint are speculative in nature and anticipate future events that may not occur. The actions to be taken in response to the new compliance obligations and the results of those actions are unknown and unpredictable. As a result, a meaningful review cannot be conducted at this time. Therefore, OCR rejects your complaint and its allegations.

While this decision does not reach the merits of the complaint, OCR notes that CARB took the proactive step of adopting an Adaptive Management Plan that requires CARB to take a range of actions to monitor co-pollutant emissions and address any unanticipated adverse impacts caused by the Cap-and-Trade regulation. The Plan states that such actions could include, for example, the adoption of additional regulatory requirements and using funds obtained from the sale of allowances to support local mitigation projects.

If you have any questions about this matter, please contact Helena Wooden-Aguilar, Assistant Director, Office of Civil Rights by telephone at 202-564-0792, by email at Wooden-Aguilar.Helena@epa.gov or by mail at U.S. EPA, 1200 Pennsylvania Ave., NW, Mail Code 1201A, Washington, D.C., 20460-0001.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Rafael DeLeon', with a stylized, cursive script.

Rafael DeLeon
Director

cc: Stephen G. Pressman, Associate General Counsel
Civil Rights & Finance Law Office (MC 2399A)

Jared Blumenfeld, Title VI Contact, U.S. EPA Region 9
75 Hawthorne Street
Mail Code: ORA-1
San Francisco, CA 94105

California Air Resources Board
Ms. Mary Nichols, Chairman
1001 "T" Street
Sacramento, CA 95814-2828

EXHIBIT 2



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG - 6 2010

OFFICE OF
CIVIL RIGHTS

RETURN RECEIPT REQUESTED
Certified Mail #7009-2820-0002-1759-4019

In Reply Refer to:
EPA File No. 11R-09-R9

Mr. Bradley Angel
Executive Director
Greenaction for Health and Environmental Justice
703 Market Street
Suite 501
San Francisco, California 94103

Re: Partial Acceptance and Referral of Administrative Complaint

Dear Mr. Angel:

This letter is in reference to the administrative complaint you filed with the U.S. Environmental Protection Agency (EPA) Office of Civil Rights (OCR) on October 15, 2009, on behalf of Greenaction for Health and Environmental Justice (Greenaction). Your complaint alleges that the California Energy Commission (Energy Commission) and the San Joaquin Valley Air Pollution Control District (APCD) violated Title VI of the Civil Rights Act of 1964, as amended (Title VI), 42 U.S.C. §§ 2000d *et seq.*, and EPA's nondiscrimination regulations implementing Title VI, found at 40 C.F.R. Part 7. OCR is partially accepting your complaint for investigation and partially referring your complaint to the U.S. Department of Energy (DOE). We are referring the allegations against the Energy Commission to DOE for its consideration because the Energy Commission receives financial assistance from DOE and not from EPA.

Pursuant to EPA's nondiscrimination regulations, OCR conducts a preliminary review of discrimination complaints to determine acceptance, rejection, or referral. 40 C.F.R. § 7.120(d)(1). To be accepted for investigation, a complaint must meet the jurisdictional requirements described in EPA's nondiscrimination regulations. First, it must be in writing. Second, it must describe an alleged discriminatory act that, if true, may violate EPA's nondiscrimination regulations (*i.e.*, an alleged discriminatory act based on race, color, national origin, sex, age, or disability). Third, it must be filed within 180 calendar days of the alleged discriminatory act. 40 C.F.R. § 7.120(b). Finally, the complaint must be filed against an applicant for, or a recipient of, EPA financial assistance that allegedly committed the discriminatory act. 40 C.F.R. § 7.15.

After careful consideration, OCR is accepting the following allegations against APCD.

1. **APCD intentionally discriminated against Avenal and Kettleman City residents of color and Spanish-speakers by failing to notify or involve residents (e.g., failing to publish information in Spanish, failing to hold public hearings) during the decision-making process prior to APCD issuing the corrected Notice of Final Determination of Compliance (FDOC) for the proposed Avenal power plant on November 4, 2008.**

On January 14, 2010, OCR sent you a letter requesting additional information regarding the dates associated with each alleged discriminatory act described in your complaint. Your March 3, 2010 response states that you did not learn of the corrected notice of FDOC until June 2009.

This allegation is accepted for investigation. The complaint is in writing and states an alleged discriminatory act that would violate EPA's nondiscrimination regulations (*i.e.*, discrimination from lack of public participation during the approval process). Additionally, APCD is a recipient of EPA financial assistance. Although the complaint was filed more than 180 days after the date of the alleged discriminatory act, OCR has the authority to waive the 180-day time limit for good cause. 40 C.F.R. § 7.120(b)(2). Based on the jurisdictional review, OCR is waiving the 180-day timeliness requirement because the complainant could not reasonably be expected to have known about the alleged discriminatory act within the 180-day period in light of the circumstances.¹ Waiving the timeliness requirement is a jurisdictional decision and does not constitute a finding of fact or violation of EPA's nondiscrimination regulations. No substantive determination about this allegation will be made until the completion of a full investigation.

2. **The operation of the proposed Avenal power plant will result in additional adverse health impacts on the residents of color of Avenal and Kettleman City, who are already impacted by multiple pollution sources.**

The complaint and your March 3, 2010 response to our request for clarification letter state that the proposed Avenal power plant will have an adverse disparate impact on the Avenal and Kettleman City residents of color living near the proposed Avenal power plant.

This allegation is accepted for investigation because it meets EPA's jurisdictional requirements, but the investigation is being held in abeyance. The complaint is in writing, and states an alleged discriminatory act that would violate EPA's

¹ Guidance from the U.S. Department of Justice provides that agencies may waive the timeliness requirement in a number of situations, including cases where "[t]he complainant could not reasonably be expected to know the act was discriminatory within the respective filing period." U.S. Dep't of Justice, *Investigation Procedures Manual for the Investigation and Resolution of Complaints Alleging Violations of Title VI and Other Nondiscrimination Statutes*, Sept. 1998 at 35.

nondiscrimination regulations (*i.e.*, adverse disparate health impacts from the upcoming operation of the Avenal power plant). Additionally, APCD is a recipient of EPA financial assistance and the complaint was timely filed. However, OCR will hold the investigation of this allegation in abeyance because the Clean Air Act Prevention of Significant Deterioration pre-construction permit application for the Avenal power plant is pending approval from EPA and, thus, the allegations are not yet ripe for review.

Remaining Allegations

1. California Energy Commission

Your complaint asserts that the Energy Commission failed to provide meaningful opportunities for public comment in the approval of the proposed power plant and failed to conduct a thorough environmental review of the health impacts on nearby residents.

A complaint must be filed against an applicant for, or a recipient of, EPA assistance to be accepted by EPA for investigation. 40 C.F.R. § 7.15. The Energy Commission does not receive EPA assistance. Therefore, OCR does not have the authority to accept the allegations against this entity for investigation. Because OCR has determined that the Energy Commission receives financial assistance from DOE, EPA is forwarding this allegation to DOE.

2. Executive Order 12898 and Environmental Law

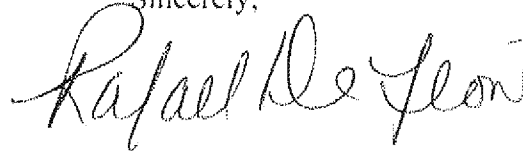
Finally, your complaint raises allegations related to Executive Order 12898, including discrimination on the basis of income, and allegations related to violations of environmental laws. OCR does not have authority over these matters, but EPA's Office of Environmental Justice and Region 9 are currently engaged in these issues in Kettleman City and Avenal. OCR, therefore, defers to them with respect to these concerns.

Pursuant to EPA's nondiscrimination regulations, APCD is being notified of the acceptance of this complaint. APCD may respond to the notice of acceptance of this complaint within 30 calendar days of receiving it. EPA's nondiscrimination regulations provide that OCR must attempt to resolve complaints informally, whenever possible. 40 C.F.R. § 7.120(d)(2). Accordingly, OCR may discuss, at any point during the process, offers to informally resolve the complaint, and may, to the extent appropriate, facilitate an informal resolution process with the involvement of affected stakeholders.

You should be aware that no one may intimidate, threaten, coerce, or engage in other retaliatory conduct against anyone because he or she has either taken action or participated in an action to secure rights protected by the nondiscrimination statutes EPA enforces. Any individual alleging such harassment or intimidation may file a complaint with EPA.

If you have any questions or need clarification regarding this letter, please contact Anthony Napoli of the OCR External Compliance and Complaints Program via Federal

Relay Service 866-377-8642, and provide the relay operator his telephone number 202-233-0651. He may also be reached via electronic mail at Napoli.Anthony@epa.gov, or by mail at: U.S. EPA, Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Ave., N.W., Washington, D.C. 20460-1000.

Sincerely,


Rafael DeLeon
Acting Director

cc: Stephen G. Pressman, Associate General Counsel
Civil Rights and Finance Law Office (2399A)

Charles Lee, Director
Office of Environmental Justice

Jo Ann Asami, EPA Region 9

Sayed Sadredin, Air Pollution Control Officer
San Joaquin Valley Air Pollution Control District

Karen Douglas, Chair
California Energy Commission

William A. Lewis, Jr., Acting Director
Office of Economic Impact and Diversity
U.S. Department of Energy

EXHIBIT 3

California Environmental Protection Agency



Adaptive Management Plan for the Cap-and-Trade Regulation

October 10, 2011

This Page Intentionally Blank

Table of Contents

I.	Executive Summary	1
II.	Introduction	1
III.	Adaptive Management	2
	A. Objectives of ARB's Adaptive Management Plan	3
	B. Questions that Frame Review and Analysis Under the Adaptive Management Plan	4
IV.	Information Gathering	6
	A. Localized Air Quality Data	6
	1. Greenhouse Gas Mandatory Reporting Regulation (MRR)	6
	2. Compliance Instrument Tracking System	7
	3. Local Air District Permits for Covered Entities	7
	4. California Energy Commission (CEC) Power Plant Permitting	9
	5. Economic Forecast Data	9
	6. Air Quality Monitoring Data	9
	7. Continuous Emissions Monitors (CEMs)	14
	8. Criteria Pollutant and Toxic Contaminant Emissions Inventory Databases	14
	B. Forest Data	18
	1. U.S. Forest Protocol Project Data	18
	2. Forest Buffer Account Information	19
	3. Greenhouse Gas Mandatory Reporting Regulation (MRR)	20
	4. ARB's Updated GHG Statewide Inventory for Forests	20
	5. California Forest Practices Act as Administered by CalFire	20
	6. Timber Yield Tax and Harvest Values Schedules	21
	7. Fire and Resource Assessment Program (FRAP)	21
	8. Geographic Information System (GIS) and Geodatabases	21
	9. Special Monitoring Projects (CalFire, Department of Fish and Game, Regional Water Quality Control Boards)	22
V.	Review and Analysis	22
	A. Local Air Quality Impacts	23
	B. Forest Impacts	25
	C. Causation	26
	1. Localized Air Quality	26
	2. Forest Impacts	27
VI.	Response	27
VII.	Public Process for this Adaptive Management Plan	28

This Page Intentionally Blank

I. Executive Summary

This document describes the Air Resources Board's (ARB or Board) recommended adaptive management plan. The plan is focused on two specific areas: localized air quality impacts from the proposed cap-and-trade regulation (cap-and-trade regulation or Regulation) and forest impacts from the proposed Compliance Offset Protocol for U.S. Forest Projects (U.S. Forest Protocol) contained in the Regulation. The plan is being released for public comment, and will be presented to the Board for consideration at the October 20-21, 2011, Board meeting. If adopted, the plan will require ARB to take a range of actions in these two areas to monitor and respond as appropriate to address unanticipated adverse impacts that are caused by the Regulation or the U.S. Forest Protocol.

Adaptive management is a process of information gathering, review and analysis, and response that promotes flexible agency decision-making. It is particularly appropriate where complex systems are involved, where the effects of an agency's decisions and actions play out over an extended period of time, and where the agency must meet multiple objectives – as in the case of the proposed Regulation. Adaptive management is consistent with ARB's long-standing approach to program implementation which incorporates on-going evaluation of how programs and regulations are implemented on the ground, regular updates to the Board, and adjustments to program implementation and regulatory requirements, as necessary.

In this plan, ARB is focusing on the two aforementioned areas where, although not anticipated, unintended environmental impacts could occur. The adaptive management plan focuses on these two areas because they were identified in the environmental analysis accompanying the rulemaking as areas where the potential for unanticipated impacts could occur and because they were specifically identified as being of special concern in public comments. It is important to note, however, that this focused adaptive management plan should be viewed in the larger context of ARB's planned oversight of the proposed Regulation and the U.S. Forest Protocol, which includes comprehensive monitoring of auctions, reserve sales, allowance holdings, compliance offset credit generation and use, reported emissions, leakage, and other aspects of the Regulation. Additionally, the adaptive management plan should also be viewed in the context of ARB's larger air pollution control programs, which already incorporate systems to measure air quality and emissions in an effort to continuously improve air quality in California.

Plan Elements

The key elements of this adaptive management plan are: (1) data and data source identification (information gathering); (2) analysis to determine whether an adverse impact is caused by the cap-and-trade regulation (review and analysis); and (3) identifying potential actions ARB could take to address these impacts and committing to take appropriate action (response).

What Data Will ARB Gather for Evaluation?

ARB identified data sources for the evaluation of potential localized air quality impacts. These include cap-and-trade specific data such as greenhouse gas (GHG) emissions, and the holdings of allowances and compliance offset credits, as well as traditional criteria pollutant and air toxics information such as air pollution control district permits, air monitoring data, and emission inventories. If the Board approves the Regulation and this plan, ARB will work with local air districts and stakeholders to refine plan details concerning air quality data gathering prior to initiation of the first compliance period on January 1, 2013.

ARB has identified data sources for the evaluation of potential unanticipated forest impacts resulting from the U.S. Forest Protocol. These include information that must be reported under the protocol, as well as emission inventories, timber harvest plans, the Fire and Resource Assessment Program, and information from other states (should forest offset projects occur in other states). As part of the adaptive management plan, ARB intends to contract with an independent third-party to assist in determining the best ways to filter and analyze the data needed to evaluate potential unanticipated impacts in this sector. ARB will work with the appropriate agencies and stakeholders to refine plan details related to data filtering and analysis.

How Will ARB Review and Analyze the Data?

As part of this plan, ARB will analyze the collected data to determine whether an environmental change such as an increase in emissions has occurred, and whether the change is caused, directly or indirectly, by the cap-and-trade regulation or the U.S. Forest Protocol. If the analysis indicates a change has occurred as a result of the Regulation or U.S. Forest Protocol, ARB will evaluate whether such change had or is likely to have an adverse impact.

It is unlikely that ARB will be able to rely on any single analysis or data source. The complex interplay of possible economic drivers, as well as other regulatory drivers, will most likely require ARB to conduct multiple analyses. It may not be possible to identify a direct causal relationship between the environmental change and the Regulation or U.S. Forest Protocol. Therefore, ARB will evaluate the weight of available evidence to determine the reason for the change.

In conducting the analysis, it will be necessary to consider normal variations, existing trends, and other factors that may be responsible for changes in the data. For example, air quality data can vary significantly from year-to-year because of meteorology. Additionally, changes in economic activity can produce large impacts on air quality and emissions trends, and factors such as rainfall can have significant impacts on emissions as a result of California's utilization of hydroelectric power as a source of energy.

The following is an illustrative example of the stepwise approach ARB will take to analyze the data for determining a localized impact:

- Monitor facilities subject to the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions (MRR) for GHG emissions increases. Increases in GHGs could indicate that an increase in other pollutants has occurred. If an increase is apparent, then;
- Review indicators to assess if the change was caused by the Regulation (e.g., the result of a compliance response to the Regulation) or some other factor (e.g., the result of increased production due to economic growth). If the change is determined to be caused by the Regulation, then;
- Work with the local air district to review co-pollutant emissions for appropriate sources and geographic areas to determine whether the change had or is likely to have adverse impacts on local air quality.

How Will ARB Respond?

In the event that an unanticipated adverse localized air quality or forest impact is identified and determined to have been caused by the Regulation or U.S. Forest Protocol, this plan requires ARB to take action to respond appropriately. While it is not feasible in this plan to identify all potential actions that could be pursued, ARB is committed to promptly developing and implementing appropriate responses through a public process, including consideration and approval by the Board as necessary.

ARB would consider a range of options to address localized adverse air quality impacts. These could include the adoption of additional regulatory requirements, using funds obtained from the sale of allowances to support local mitigation projects, coordination with other agencies to provide additional incentives for energy efficiency or other emission reduction activities within the community, or modifications to the Regulation.

For unanticipated impacts from the U.S. Forest Protocol, ARB could consider revising the types and/or geographic location of forest offset projects, or disallowing the use of certain types of U.S. Forest Protocol compliance offset credits. Other types of responses are also possible and would be considered and implemented as necessary.

Public Process for this Adaptive Management Plan

ARB is soliciting comments on this plan. The Board will consider this plan at its October 20-21, 2011, Board meeting. Interested members of the public may present comments orally or in writing at the meeting, and comments may be submitted by postal mail or electronic submittal before the meeting.

Postal Mail: Clerk of the Board, Air Resources Board
1001 I Street, Sacramento, California 95814

Electronic submittal: <http://www.arb.ca.gov/lispub/comm/bclist.php>

Upon Board approval, ARB will work with our local air district partners, departments of the Natural Resources Agency (resource agencies), and stakeholders to implement the plan based on the following schedule:

October 10, 2011	ARB releases Draft Adaptive Management Plan for comment.
October 20-21, 2011	Board considers Adaptive Management Plan for approval.
November 2011	Staff works with local air districts, resource agencies, and stakeholders to finalize specific details concerning data gathering under the Adaptive Management Plan.
Early 2012	ARB contracts for third-party forestry expertise.
Mid-2012	Staff updates Board on Adaptive Management Plan implementation.
December 2012	Staff releases Adaptive Management Implementation Report (prior to first compliance period).
December 2013	Staff updates Board on Adaptive Management implementation.
December 2014	Staff releases Adaptive Management Report for calendar year 2013.
December 2015	Staff releases Adaptive Management Report for calendar year 2014 and end of first compliance period.
Ongoing	Staff releases Adaptive Management Report annually.

II. Introduction

In December 2010, ARB considered the proposed cap-and-trade regulation. As part of the rulemaking, an environmental impacts analysis was prepared and included in Appendix O to the Staff Report: Initial Statement of Reasons and entitled Functional Equivalent Document (FED). The environmental analysis concluded that increases in localized air pollution or forest project related impacts caused by the Regulation or U.S. Forest Protocol are unlikely based on available data and current laws that control localized air pollution and regulate forest activities. However, ARB could not determine that increases would not ever occur. In addition, commenters raised concerns about the potential for localized air impacts and the potential for impacts to forest resources related to forest offset projects. ARB, therefore, committed to use an adaptive management approach as an integral part of the implementation of the cap-and-trade program in order to address unanticipated impacts that could result from the Regulation related to these two specific areas.

The areas of focus in this adaptive management plan are localized air quality impacts and impacts from the U.S. Forest Protocol on special status species, sensitive habitats, and federally protected wetlands (hereafter referred to as forest impacts). It is important to note, however, that the elements of monitoring, review, and feedback contained in adaptive management will be more generally applied to the cap-and-trade regulation to ensure that all of its objectives, including GHG emissions reductions, are achieved. Accordingly, the focused adaptive management plan in this document must be viewed in the larger context of our planned oversight of the cap-and-trade regulation which includes comprehensive monitoring of auctions, reserve sales, allowance holdings, compliance offset credits generation and use, reported emissions, leakage, and other aspects of the program.

The plan includes a description of what is meant by adaptive management, ARB's objectives in implementing the plan, and a process for systematic data compilation, evaluation, and public review. The key elements of this adaptive management plan are: (1) data and data source identification (information gathering); (2) analysis to determine whether an adverse impact is caused by the cap-and-trade regulation (review and analysis); and (3) identifying potential actions ARB could take to address these impacts and committing to take appropriate action (response).

Staff anticipates that data gathering will be straightforward. The work of review and analysis, however, will be challenging because there could be many reasons for a change in localized air emissions or forest management practices. Examples are a change in laws unrelated to the Regulation; economic growth related to recovery from the economic downturn; adoption of a new technology within an industry; and increased consumer demand for a specific product.

Under the plan, ARB staff would work with the local air districts where facilities subject to the Regulation are located in an effort to refine a specific, systematic approach for efficiently compiling, interpreting, and evaluating the data. Because ARB is not expert

in forestry practices, ARB plans to contract with an independent third-party (ARB contractor) to assist it in determining the best ways to filter and analyze the data needed to evaluate potential, unanticipated impacts related to forestry.

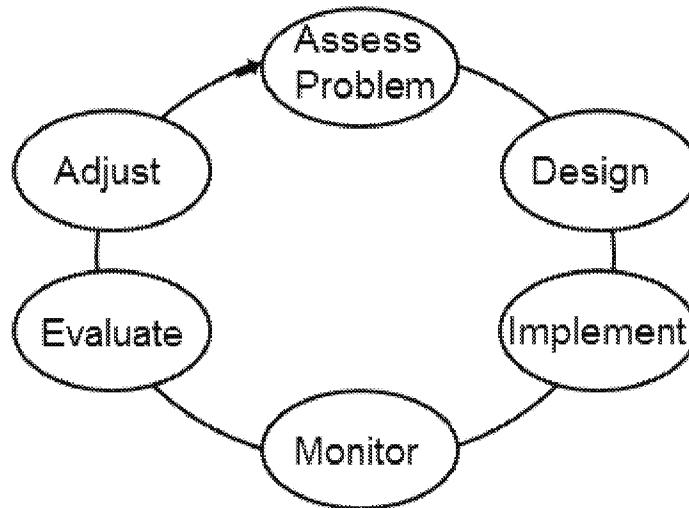
ARB will consider approval of this plan at the October 20-21, 2011, Board meeting. Upon Board approval, ARB will work with the local air districts, resource agencies, and stakeholders to implement the plan. The timeline for completion of this work is before the beginning of the first compliance period in January 2013. The first adaptive management report is planned for December 2012, and will focus on the first phase of implementation. Annually thereafter, staff will provide reports to the public and the Board on the implementation of the adaptive management plan. The annual adaptive management plan reports will, among other things, outline the data collected and the trends observed, and discuss any recommended responses.

III. Adaptive Management

Adaptive management is a process of information gathering, review and analysis, and response that promotes flexible agency decision-making. It is particularly appropriate where complex systems are involved, where the effects of an agency's decisions and actions play out over an extended period of time, and where the agency must meet multiple objectives – as in the case of the proposed Regulation. Adaptive management is consistent with ARB's long-standing approach to program implementation which incorporates on-going evaluation of how programs and regulations are implemented on the ground, regular updates to the Board, and adjustments to program implementation and regulatory requirements, as necessary.

Figure 1, representing the adaptive management process, illustrates how new information is used to refine and adjust agency action to continually meet its defined objective¹.

Figure 1: Adaptive Management Process



Implementation of the cap-and-trade regulation is expected to begin in January of 2012 (assuming it is approved by the Board). Using the adaptive management approach, ARB will assess whether there are unanticipated, adverse localized air quality or forestry impacts from the Regulation or U.S. Forest Protocol and evaluate the data discussed in this plan for indicators of unintended adverse impacts. If adverse impacts in these areas are found and demonstrated to be the result of the Regulation or U.S. Forest Protocol, ARB is committed to taking appropriate action and adjusting the operation of the program to minimize the effect or occurrence of the action that caused the impact.

A. Objectives of ARB's Adaptive Management Plan

The objectives of ARB's adaptive management plan include:

- Identify potential localized emission increases and forest impacts caused by the cap-and-trade regulation.
- Establish a process to address unanticipated adverse local air quality and forest impacts.
- Keep the public and Board informed of impacts attributed to the cap-and-trade regulation.

¹ United State Department of the Interior: <http://www.doi.gov/initiatives/AdaptiveManagement/whatis.html>

The strategies that ARB will employ to achieve these objectives include:

- Identify data sources.
- Use data to assess if there has been or is anticipated to be an increase in localized emissions or change in forest ecology.
- Assess if the change is caused directly, or indirectly, by the cap-and-trade regulation.
- Use data to assess if there has been or is anticipated to be an adverse impact.
- Share data and reports with the Board and public annually.
- Report to the Board as needed but, at a minimum, annually in conjunction with the issuance of the annual adaptive management plan report.
- Take appropriate action to address any adverse impacts related to localized emissions or forestry caused by the Regulation.

B. Questions that Frame Review and Analysis Under the Adaptive Management Plan

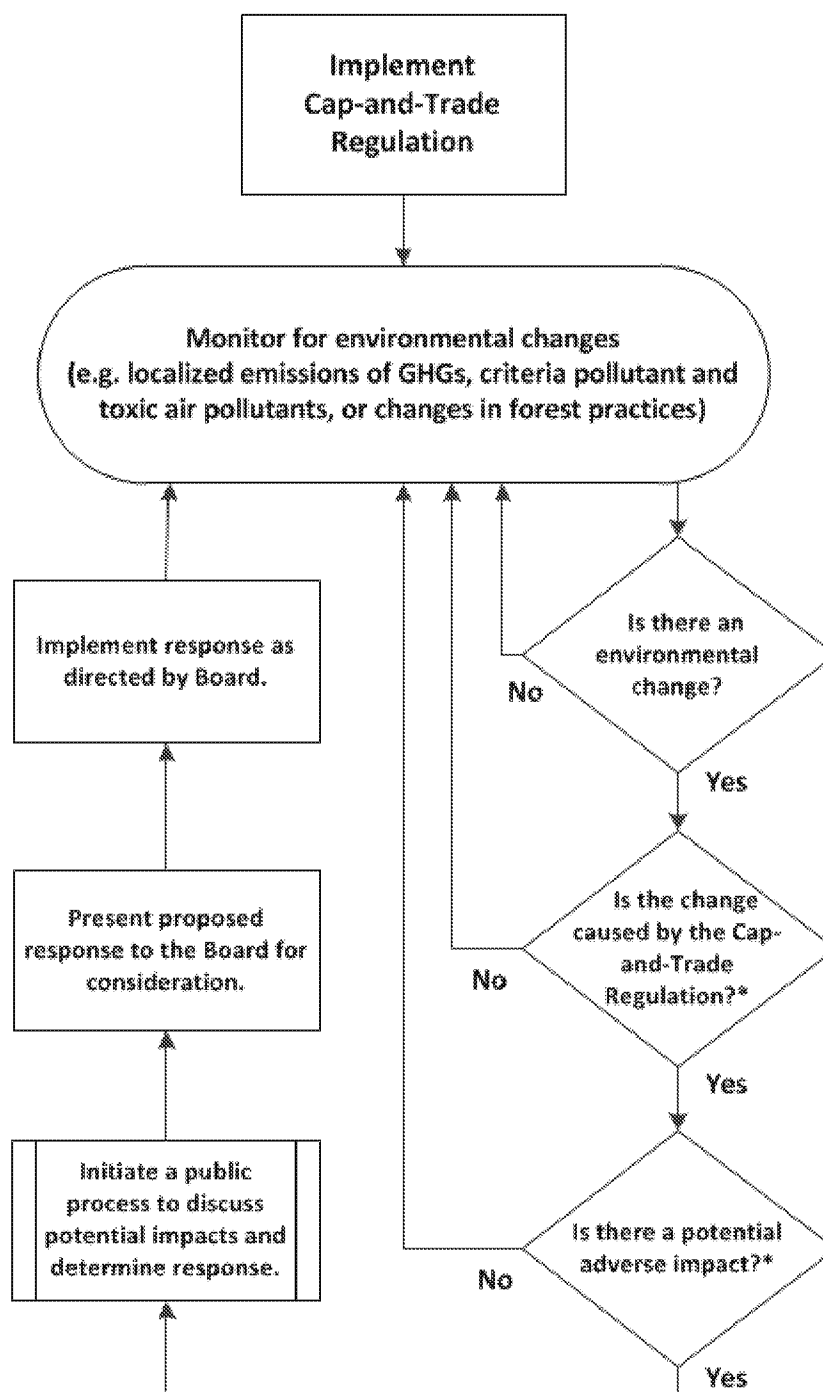
The key questions that must be answered on an on-going basis by the adaptive management plan are:

- Has an environmental change (e.g., increase in emissions or transition in forest practices used) occurred?
- Is the environmental change caused, directly or indirectly, by the cap-and-trade regulation or U.S. Forest Protocol?
- Has the environmental change had an adverse localized air quality or forest impact?
- What action could ARB take to address an adverse impact linked to the cap-and-trade program or U.S. Forest Protocol?

The key elements of this adaptive management plan are: (1) data and data source identification (information gathering); (2) analysis to determine whether an adverse impact is caused by the cap-and-trade regulation (review and analysis); and (3) identifying potential actions ARB could take to address these impacts and committing to take appropriate action (response).

Figure 2, representing the flow of ARB's adaptive management plan, illustrates how ARB will implement adaptive management, monitor and evaluate data, and make adjustments to the Regulation, if necessary.

Figure 2: ARB Adaptive Management Plan Flow Chart



* These questions will be addressed based on the evaluation of a range of data sets and will involve technical judgment and other available tools and methods.

IV. Information Gathering

In this section, ARB discusses the information to be gathered for review and evaluation. Because this section discusses at various places why staff is gathering certain data – that is, why it is relevant – this section also necessarily previews the next section on analysis and review.

A. Localized Air Quality Data

ARB identified data sources for the evaluation of potential localized air quality impacts. These include GHG inventories, traditional criteria pollutants and air toxics emissions data, local air district or state agency permit information, air monitoring data, special monitoring studies, and other sources of data including new cap-and-trade program specific data such as GHG emissions, and the use of allowances and compliance offset credits to comply with the Regulation. If the Board approves this plan, ARB will work with local air districts and stakeholders to finalize specific details concerning data gathering, including the best means to transmit, filter, and analyze the data for localized air quality impacts, and complete the details before initiation of the first compliance period in January 2013.

It is important to remember that many factors can cause changes at facilities, and that once an increase has been detected, additional sources of data must be used to assess if the increase is the result of the cap-and-trade regulation. Below are a number of sources of information that ARB will consider in determining if an adverse impact resulting from the cap-and-trade regulation has occurred or will occur. As ARB implements the adaptive management plan, it may find additional sources of data to include or it may find that some sources of data are not useful to continue to monitor.

1. Greenhouse Gas Mandatory Reporting Regulation (MRR)

Reporting of annual GHG emissions by major sources is required by AB 32. ARB approved the MRR in December 2007, and it became effective in January 2009. Revisions to the regulation were considered by the Board at its December 2010, Board hearing, and ARB staff is proposing additional modifications based on Board direction and stakeholder comments, prior to finalizing the regulation for 2012 reporting. More on the MRR can be found at:

<http://arb.ca.gov/cc/reporting/ghg-rep/ghg-rep.htm>

The current MRR requires reporting emissions of six GHGs: carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), perfluorocarbons (PFCs), hydrofluorocarbons (HFCs), and sulfur hexafluoride (SF₆). It is applicable to: facilities in California that generate 25,000 metric tons of CO₂ per year (MTCO₂/year) or greater; electrical generating facilities that produce 1 megawatt (MW) or greater, or that generate 2,500 MTCO₂e or greater per year; and retail providers and marketers of electrical power. Facilities report directly to ARB, and are required to use the methodologies in the MRR,

providing consistency across the State. The first reporting year was in 2009 (for 2008 data, which was not third-party verified). Beginning in 2010 (for 2009 data), the reported data were subject to third-party verification by ARB-accredited verifiers, which requires that data are reported within ninety-five percent accuracy. For 2010 (2009 data), about ninety-five percent of all reporting facilities were able to report their data with less than five percent error. The verification deadline is currently December 1.

The pending, proposed amendments to the MRR cover three GHGs: CO₂, CH₄, and N₂O. The other gases that were previously covered are proposed to be covered in various new regulations (e.g., high global warming potential gases and SF₆ regulations). The proposed amendments are applicable to: facilities in California that generate between 10,000-25,000 MTCO₂e/year (no verification) and 25,000 MTCO₂e/year or more (verification required); fuel and CO₂ suppliers; and electric power entities. The first reporting year is in 2012 which will include 2011 emissions data that are third-party party verified. The verification deadline will be September 1 starting in 2012 and continuing in future years.

The GHG MRR database involves the collection of total annual combustion emissions for a facility by fuel types and includes specific chemical process emissions. Device-level emissions are limited in most cases. Thus, MRR GHG data are summarized at a higher level than the criteria pollutant California Emission Inventory Development and Reporting System (CEIDARS) inventory, which is available at the device and process level. However, the GHG data are reported annually and available approximately nine months after the end of the inventory year making it the most current data source in any year. Due to differences in the level of detail in data collected from these two sources, it may be difficult to evaluate consistency in emissions trends.

The MRR data could be used to track increases in GHG emissions, or equipment changes at facilities covered under the proposed Regulation, identify fuel type changes, and help point to potential impacts resulting from co-pollutants.

2. Compliance Instrument Tracking System

The Compliance Instrument Tracking System will contain the records of compliance instrument ownership for the Regulation. It will contain information related to accounts, record compliance instrument transfers, facilitate compliance verification, and support market oversight. Reviewing the number of compliance offset credits and allowances held by facilities covered by the proposed Regulation could provide information on potential plans to increase emissions at a facility. It is important to note that holdings in these accounts are confidential data, and therefore, this information will not be publicly available, but can be monitored by ARB staff.

3. Local Air District Permits for Covered Entities

Local air districts permit stationary sources that are sources of air pollutants. These permits are required prior to construction of new facilities or modification at existing

facilities subject to local air district regulations. Additionally, the facility must maintain its permit and continue to abide by the restrictions contained therein to continue to operate.

Local Air District Existing Permits

The permitted level of emissions is typically based on the maximum expected throughput or maximum rated capacity of a piece of equipment or process. It is possible that emissions increases could occur at a facility and the facility would still meet the legal requirements of their operating permit. Because of this, permit activity will not show increases that may have occurred within the conditions legally authorized by the existing permit(s). However, information from these permits could still provide valuable insight into whether a facility covered under the proposed Regulation has, or could, increase emissions by understanding emissions trends for existing facilities.

Local Air District Permits to Modify Facilities Covered by Cap-and-Trade Program

When construction of a new facility, or modification to an existing facility, is proposed, the facility operator must apply with the local air district for permission to construct most equipment that will emit criteria or toxic pollutants. This permission is known as a permit to construct or authority to construct. Not all proposed facilities that are issued a permit or authority to construct are constructed.

A local air district conducts an engineering evaluation on the equipment and processes in the permit application to determine the potential emissions. The proposed construction is evaluated for emissions of criteria pollutants and local impacts of emissions of toxic air pollutants, if applicable. The project is typically subject to requirements under its permit conditions that reduce emissions (known as controlled emissions), depending on factors such as the attainment status of the local air district or the local impact of toxic air pollutant emissions from the project. Additionally, most projects that require a permit to construct generally are subject to the California Environmental Quality Act (CEQA). Projects that will have a significant effect on the environment must undertake feasible mitigation. It is important to note that the local air district may, or may not, be the lead agency in the CEQA assessment.

As part of this permitting process, local air districts' rules to meet federal and State requirements for new source review (NSR) programs may be applicable, especially to large sources covered under the Regulation. These rules are intended to improve or maintain a region's air quality by assuring that new emissions from new and modified facilities do not slow progress toward cleaner air or worsen air quality in regions that attain air quality standards. The best available control technology (BACT) provisions of NSR provide assurance that emissions from any large new or modified industrial source will be stringently controlled. Additionally, if new construction or modification results in the facility exceeding a district's NSR offset thresholds, then the facility must either reduce emissions elsewhere at the facility or obtain emission reduction credits (ERCs) in amounts greater than the direct emissions increase. These ERCs must be obtained from within the region or from areas close by, thus mitigating the increase in emissions at the facility in terms of regional air quality.

Working with local air districts, ARB will implement a process to track permit applications for modifications to facilities subject to the Regulation, or for construction of new facilities that would be subject to the Regulation.

4. California Energy Commission (CEC) Power Plant Permitting

The CEC permits thermal power plants that have the capacity to generate fifty megawatts (MW) or greater. Local municipalities permit those with less than a fifty MW generating capacity. Local air districts also permit power plants that are combustion sources. However, CEC and local municipality permits may provide greater advanced notice of proposed facilities. Additionally, the CEC tracks announced projects with generating capacity of 50 MW or greater that have not yet filed for review. Not all facilities that are issued a permit are constructed. ARB currently works with CEC to track permit applications for construction of new power plant facilities or modification of existing power plant facilities.

5. Economic Forecast Data

A variety of economic forecast data are available from local, State, and federal agencies. Including forecast data in the analysis will be useful for evaluating the proportion of emission changes related to economic factors. Examples of specific forecasts from agencies that could be used include economic and energy forecasts based on the estimates adopted by the CEC published in Integrated Energy Policy Reports. Examples of academic economic forecasts that could be used include the California and Metro forecast published by the Business Forecasting Center at the University of the Pacific and the UCLA Anderson Forecast published by the Anderson School of Management at the University of California, Los Angeles. ARB will use these types of economic forecasts for comparison with emissions trends to determine if emissions are consistent with changes in the economy, or in specific economic sectors. If emissions are substantially different than changes in the economy, then the data could suggest that changes in emissions are related to factors other than economic change.

6. Air Quality Monitoring Data

In California, ambient air quality is routinely measured for gaseous, toxics, and particulate air pollutants. The extensive network is designed to cover the diverse range of topography, meteorology, emissions, and air quality in California, while adequately representing a large population. In general, the network tends to be denser in areas with more severe air quality problems and in areas with larger populations. The monitoring stations are operated by ARB, local air districts, the National Park Service, and private contractors.

The data collected by the monitoring network are used to track air quality progress, evaluate emissions inventory and air quality models, analyze neighborhood or regional source attribution, and evaluate the success of emission control programs. The

measured data form a backbone for air quality management programs, provide the public with information on current conditions and progress in improving air quality, and are used by health researchers, business interests, environmental groups, air quality planners, and others.

The ambient air quality monitoring network captures data representative of a broad range of sources and regions throughout the State. Monitors are designed to represent pollutant levels on different spatial scales, ranging from near-source localized impacts up to broad regional-scale conditions. Although a few monitors are located so they will represent small areas dominated by specific local sources, most monitors are designed to represent the combined impact of multiple, distributed sources over the scale of a neighborhood or city or more. Thus, detecting the impact of changes at an individual facility can be difficult.

Monitors are also designed to represent different periods of time. A number of pollutants, including gaseous pollutants such as ozone (O₃), oxides of nitrogen (NO_x), and carbon monoxide (CO) are reported hourly. Many other pollutants, such as particulate matter (PM), hydrocarbons, and toxics are typically measured as 24-hour averages on a less-than-daily schedule. Hourly values can sometimes be used to represent a significant source by selecting hours when the monitor was downwind of that source. Daily values, however, usually represent a varying mix of wind directions, so the impact of a specific source is harder to detect.

Levels of air pollutants fluctuate from year-to-year for various reasons, including changes in human activity and differences in weather conditions. A longer term record of measurements at a monitor helps establish the expected level of variability. Special studies in which monitors operate for a few years often lack the track record needed to assess this variability and thus may have less utility in tracking the impacts of emission changes.

ARB reviews data collected as part of the routine network and evaluates air quality trends on an ongoing basis. ARB will use this data to assess, within the context of normal air quality variability, whether any unusual trends are being observed. Staff will also work with local air districts to review and evaluate data from localized monitoring networks and special studies.

The following sections describe the various types of air quality monitoring networks that are currently operating in California, data from which will be considered under the adaptive management plan.

Statewide Criteria Pollutant Monitoring Network: The statewide criteria pollutant monitoring network consists of more than 250 monitoring locations with over 700 monitors that measure O₃, PM, NO_x, sulfur dioxide (SO_x), CO, hydrogen sulfide (H₂S) and lead. Each site in the monitoring network includes a combination of one or more monitors that collect either continuous or non-continuous air quality data. As mentioned above, gaseous monitoring data for O₃, NO_x, SO_x, CO, and H₂S, are collected hourly.

Lead monitoring data and most particulate monitoring data reflects a 24-hour average which is collected on schedules ranging from daily, up to once every sixth day. A subset of particulate monitoring sites also collect hourly data. Data for pollutants that are directly emitted, such as PM, SO_x, and CO, tend to represent concentrations over a smaller area, such as a neighborhood. In contrast, data for pollutants that are formed in the atmosphere, such as O₃, generally represents larger scale regions such as a city or county.

Statewide Toxics Monitoring Network: The statewide toxics monitoring network includes 17 sites that collect 24-hour samples two or three times each month. This network collects data for cancer-causing compounds, such as benzene, 1,3 butadiene, and formaldehyde. Data for toxic metals such as arsenic, cadmium, and chromium are also collected. The toxics monitoring network is focused on major urban areas of the state and the sites are generally co-located with other criteria pollutant monitoring. As such, the toxics network represents the combined emissions of widespread and distributed sources, rather than localized emission impacts from individual sources.

Additional toxics monitoring has been conducted by some local air districts for special purposes, some short-term, and some for ongoing interests. The South Coast Air Quality Management District and the Bay Area Air Quality Management District have been especially active in this respect. These data can assist in evaluating trends in ambient air toxics as a comparison to changes observed at covered facilities.

Localized Monitoring Networks: In addition to ARB's long-term statewide ambient monitoring network, there are several source-oriented monitoring networks that are operated by local air districts. These networks are intended to manage air quality improvement efforts and to discern near source, localized air quality impacts (from refineries, ports, and industries within communities). This data can assist in evaluating trends in ambient air quality as a comparison to changes observed at covered facilities. Some selected examples of the near-source programs are:

Bay Area Refinery Monitoring Program: The Bay Area Air Quality Management District (BAAQMD) Regulation 9 requires monitoring of SO₂ and H₂S near potential major sources of either pollutant. Each of the five oil refineries as well as an associated carbon plant within the BAAQMD jurisdiction is subject to Regulation 9 as a condition of their BAAQMD operating permit. Covered facilities are required to operate a minimum of three Ground Level Monitoring (GLM) sites with instruments capable of recording pollutant concentrations in the ambient air outside of the property line of their facility.

There are twenty GLM monitoring sites surrounding the covered facilities in the Bay Area. Five of the facilities covered are located in northwest Contra Costa County and one is located in southwest Solano County. Of the twenty GLM sites, thirteen have instruments that monitor both SO₂ and H₂S, five measure H₂S only, and two measure SO₂ only. This network has been operational for the last ten to

fifteen years, though location and site conditions may have changed over this time period.

South Coast Ports Monitoring: This monitoring network, operated by the Ports of Long Beach and Los Angeles, measures air quality at the ports and nearby communities to better manage local air quality improvement efforts. Monitoring was initiated at both ports in 2006. O₃, CO, NO_x, SO_x, and PM are collected on a real-time basis. The Port of Long Beach operates two monitoring stations: one in the Inner Port area, near West Long Beach, and the second in the Outer Port area, near the breakwater. The Port of Los Angeles operates four monitoring stations, located in the Outer Harbor area at Berth 47, at the Terminal Island Treatment Plant, in the community of San Pedro, and in the community of Wilmington. The six-monitor network was developed under the Green Port Policy.

South Coast Lead Monitoring: The South Coast Air Quality Management District has collected lead data for a number of years at five sampling sites located near lead-related facilities that were established as part of the District's Rule 1420 (Emissions Standard for Lead). The purpose of Rule 1420 is to reduce lead emissions from non-vehicular sources. It applies to all facilities that use or process materials containing lead, including primary or secondary lead smelters, foundries, lead-acid battery manufacturers or recyclers, as well as facilities that produce lead-oxide, brass, and bronze. The samplers are located at or beyond the property line of the facility and comply with United State Environmental Protection Agency (U.S. EPA) siting and operating criteria. Lead samples are generally collected on a 1-in-6 day schedule, although samples are collected more frequently at sites with the highest concentrations.

Special Studies: A subset of monitoring is special studies conducted by ARB or local air districts. The information obtained from these types of studies may be helpful in establishing "initial conditions. If additional follow-up studies are undertaken (i.e., MATES III was a follow-up to MATES II), then the data collected may provide a useful input in establishing changes in conditions (depending upon the design and location of follow up studies). The following describes two of these special studies conducted by local air districts. In addition, ARB special studies, including those using mobile monitors, may provide additional sources of data.

Multiple Air Toxics Exposure Study III (MATES III): The Multiple Air Toxics Exposure Study III (MATES III) was a monitoring and evaluation study conducted in the South Coast Air Basin (Basin). The study is a follow on to previous air toxics studies in the Basin and is part of the South Coast Air Quality Management District Governing Board's Environmental Justice Initiative. The study consists of several elements, including a monitoring program, an updated emissions inventory of toxic air contaminants, and a modeling effort to characterize risk across the Basin. It focuses on the carcinogenic risk from exposure to air toxics.

A network of ten fixed sites was used to monitor toxic air contaminants once every three days for two years. The location of the sites was the same as in the previous MATES II Study to provide comparisons over time. The one exception was the addition of the West Long Beach site. In addition to the fixed sites, five additional locations were monitored for periods of several months using moveable monitoring platforms. These micro-scale sites were chosen to determine if there were gradients between communities that would not be picked up by the fixed locations. Over 30 gaseous and particulate air toxics were measured.

Community Air Risk Evaluation (CARE) Program: The CARE program was initiated in 2004 by the Bay Area Air Quality Management District to evaluate and reduce health risks associated with exposures to outdoor toxic air contaminants in the Bay Area. The program is being carried out in three phases.

The goal of Phase I was to develop an emissions inventory for year 2000 and compile demographics and health statistics in order to identify high sites and locations of sensitive populations. In Phase 1, an annual emissions inventory was developed for diesel PM, benzene, formaldehyde and other toxic air contaminants (TACs) for localized areas. Additional studies conducted to verify TAC emissions estimates and improve the Bay Area toxic inventory include a telephone survey of residential wood burning, a carbon-14 analysis to determine new versus old carbon fractions in the ambient air, a chemical mass balance (CMB) study to estimate the source contributions to various ambient PM compounds, and a CMB analysis of organic PM compounds.

The goal of Phase II was to improve the TAC inventory and begin preliminary regional (Bay Area) and local (priority communities) scale modeling to estimate significant sources of diesel PM and TACs. Using regional modeling, the CARE program identified areas within the Bay Area, where high TAC exposures of sensitive populations—youth and seniors—intersect areas with high TAC emissions and areas with high poverty levels. This analysis identified six impacted communities where special studies, grant funding, emission reduction efforts, and enforcement actions have been focused. TAC emissions reduction measures are in place throughout the Bay Area but, through the Bay Area Air Quality Management District's *Mitigation Action Plan*, special attention has been given to promoting and tracking progress in the impacted areas.

The goal of Phase III is to conduct an extensive exposure assessment to identify and rank the communities as to their potential TAC exposures, and determine the types of activities that place them at highest risk. The District will also pursue additional mitigation measures and provide a metric to assess their effectiveness in reducing overall exposure.

7. Continuous Emissions Monitors (CEMs)

Many large industrial facilities have continuous emissions monitors (CEMs) installed on equipment that are sources of air pollutants. As the name implies, CEMs units continuously monitor the concentrations of pollutants in the exhaust stream of the emission source. Typically, these monitors are required by the local air district's permit to operate, or rule provisions, to ensure that the equipment does not violate the permit conditions.

Local air districts receive data from CEMs units that are in place to satisfy permit or rule requirements. ARB will work with the local air districts to determine whether CEMs data would be useful for identifying overall facility emissions and, if so, ARB will include it in the adaptive management process.

8. Criteria Pollutant and Toxic Contaminant Emissions Inventory Databases

In addition to the GHG inventories discussed above, ARB and local air districts develop inventories of criteria pollutant and toxic contaminants. These emission inventories are used in a multitude of air quality programs to understand the relative contribution of sources, to develop control strategies for State Implementation Plans, track regional progress towards air quality goals, conduct risk assessments, and support regulatory development. Inventories are calculated estimates of emissions that are released from sources into the air where they disperse. When used in combination with other sources of data, such as economic activity and trends, ambient air quality, facility permit data and more specialized air quality data or studies, inventories can be helpful in understanding potential changes and impacts on the air quality of regions and sub-regions.

As part of the State's comprehensive inventory development process, local air districts collect emission information directly from the facilities and businesses that are required to obtain an air pollution operating permit. That data includes information about the nature of the facility's processes, the location of the facility, the type of pollutants emitted and the mass of the pollutants emitted. Facilities work with their respective local air districts to determine the best methodology to estimate their emissions, and the methodologies for estimating criteria pollutant emissions may vary across districts. Local air districts report the criteria pollutant data to ARB annually. Emission inventories of toxic pollutants are developed in a similar way and are collected through the Air Toxics "Hot Spots" Program. Local air districts collect toxic inventory data and report it to ARB every four years as defined by California statute.

It is important to note that inventories in general represent calculated estimates of emissions, except where facilities are required to use CEMs to measure emissions from stacks. For the most part, facilities (and broader source categories) rely on average emission factors and estimates of activity to determine the total estimated emissions. For these reasons, inventories are most useful for understanding relative contributions

and long term trends, inventories are not generally designed to detect day-by-day or even month-by-month changes.

In addition, many external factors can influence the variability in emissions, and it is essential to take these factors into account when looking at emission trends. For example, a facility's emissions can vary because of changes in facility-specific product demand, fuel cost or availability, cost or availability of electric power, economic conditions; labor availability; production material availability; routine maintenance; or unusual events such as power outages or breakdowns. In recent years, the economic downturn has had a dramatic impact on activity resulting in lower emissions. As the economy recovers, a commensurate increase in emissions should be expected. Another factor that has to be considered when comparing inventories is the improvement in methods used for estimating emissions. Over time, our understanding of emission rates and activity from sources has improved substantially. With new methods, the resulting emission estimate may be different. Therefore, a change in emissions at a facility from year-to-year may be the result of a better characterization of emissions rather than a real world increase or decrease. The following sections describe some of the available emission inventory data and databases maintained by ARB. Local air districts also maintain data on their facilities; two of these are also described.

a. California Emission Inventory Development and Reporting System (CEIDARS)

The federal Clean Air Act requires states to compile emission inventories of criteria pollutants. California's statewide emissions inventory is maintained by ARB, and is populated with data submitted by the local air districts, as well as that collected by ARB. The criteria pollutant emission inventory includes information on the emissions of reactive organic gases (ROG), NO_x, SO_x, CO, and PM. Data are gathered on an ongoing basis and stored in CEIDARS. A summary of the criteria pollutant inventory is published in ARB's Air Quality and Emissions Almanac. More information on CEIDARS and the Almanac can be found at:

<http://www.arb.ca.gov/ei/general.htm>

<http://www.arb.ca.gov/aqd/almanac/almanac.htm>

CEIDARS contains California's comprehensive inventory and includes information on approximately 13,000 individual facilities such as electric power plants and refineries. There are also about 135 aggregated point source categories. Aggregated point sources are not inventoried as individual facilities but are estimated as a group and reported as a single source category (e.g., gas stations and dry cleaners). In addition to individual facilities, CEIDARS includes approximately 80 source categories made up of sources of pollution, such as architectural coatings and consumer products, spread across a region and mobile sources - all on-road vehicles such as automobiles and trucks; plus off-road vehicles such as trains, ships, aircraft; and farm equipment.

Emission estimates within CEIDARS are based on a snap-shot of a variety of dynamic and variable processes. The data in CEIDARS represent annual average estimates for a specific calendar year. Annual average emissions are stored for each county, air basin, and district. There is also a Facility Search Tool that provides direct access to the year-by-year emissions reported for individual facilities, both criteria and toxics:

<http://www.arb.ca.gov/app/emsinv/facinfo/facinfo.php>

CEIDARS data can be used to look at trends in emissions as a comparison to observed changes at covered sources.

b. California Toxic Inventory (CTI)

ARB collects toxic emissions from thousands of facilities in California. The CTI provides annual average estimates of toxic emissions and is updated every four years. CTI data is stored in CEIDARS (described above).

Toxic pollutant emissions from stationary sources include point source data provided by local air districts pursuant to the Air Toxics "Hot Spots" Program (AB 2588). The Air Toxics "Hot Spots" Information and Assessment Act (AB 2588, 1987, Connelly) was enacted in 1987, and requires stationary sources to report the types and quantities of certain substances routinely released into the air. The goals of the Air Toxics "Hot Spots" Act are to collect emission data, to identify facilities having localized impacts, to ascertain health risks, to notify nearby residents of significant risks, and to reduce those significant risks to acceptable levels.

For sources without AB 2588 data, the CTI is developed by dis-aggregating (also known as "speciating") CEIDARS-based estimates of total organic gas (TOG) and PM for area, mobile, and natural sources using the most recent speciation profiles. Speciation profiles provide species-specific mass ratios (i.e., chemical-species-to-total TOG or PM) and are based on source tests from representative emission sources. The "speciated" emissions for each source category are then reconciled with reported stationary point source toxics data to establish a complete inventory. More information on the CTI can be found at:

<http://www.arb.ca.gov/toxics/cti/cti.htm>

CTI data can be used to evaluate trends in emissions of air toxics as a comparison to observed changes at covered sources.

c. Data for Non-vehicular Source, Consumer Products and Architectural Coatings Fees

The Health and Safety Code authorizes ARB to impose additional fees on non-vehicular sources (facilities) that emit 250 tons or more per year of any nonattainment pollutant or its precursors. While the data used for the fee program

initially comes from ARB CEIDARS database, ARB provides the facilities and the local air districts an opportunity to update and correct emission estimates. These updates are more current than the annual criteria pollutant submittals. The fee program includes approximately 60 facilities. These fees are used by ARB to mitigate or reduce air pollution created by non-vehicular sources in the State.

http://www.arb.ca.gov/ei/nscpac_fees/nscpac_fees.htm

This data provides another source of emission data that can be compared to observed changes at covered emission sources.

d. South Coast AQMD Annual Emission Reporting (AER) Program

The South Coast Air Quality Management District's Annual Emission Reporting (AER) program was developed to track emissions of air contaminants from permitted facilities. The data collected by AER is used to update the comprehensive emissions inventory for the District, which includes Orange County, the non-desert portions of Los Angeles and San Bernardino counties, and the Riverside county areas west of the Palo Verde Valley. Fees for emissions of air contaminants are assessed based on the reported data. These fees help to cover the costs of evaluating, planning, inspecting, and monitoring air quality efforts. Under this program, those who emit more, pay more toward air pollution control efforts – and at the same time are given an incentive to reduce emissions. On January 1, 2008, the South Coast Air Quality Management District moved AER from a fiscal year basis (July 1 through June 30 of the following year) to a calendar year basis (January 1 through December 31 of each year). The compiled inventory is published in each update of the Air Quality Management Plan. More on the AER can be found at:

<http://www.aqmd.gov/aer/aer.html>

e. South Coast AQMD RECLAIM Program

The REgional CLean Air Incentives Market (RECLAIM) program is a cap-and-trade program operated by the South Coast Air Quality Management District. It encompasses most of the Basin's largest NO_x and SO_x stationary sources. It was developed to make significant progress in cleaning up the worst air in the nation. It is a multi-industry program with each facility having annual allocations and declining balances. Developed in the early 1990s, RECLAIM was seen as an innovation compared to previous command-and-control programs. Benefits included lower costs and greater flexibility for industry participants, and secured emission reductions with better emissions monitoring for environmental and community interests. More information on RECLAIM can be found at:

<http://www.aqmd.gov/reclaim/index.htm>

Nearly 80 percent of emissions under RECLAIM are from major sources, which are monitored by CEMs. Therefore, the accuracy of these emission data is of utmost importance in determining if RECLAIM is achieving its emission goals. In order to assure the highest accuracy, several checks are imposed on CEMs – initial certification and re-certification when modified, daily calibration checks, routine quality assurance and quality checks (QA/QC), and a semi-annual relative accuracy test audit (RATA).

B. Forest Data

ARB identified data sources for the evaluation of potential forest impacts caused by the U.S. Forest Protocol. Some of the data sources described below are readily available and some are expected to be available at a later date. ARB expects that it will be able to review and analyze some of the data sets without expert assistance. Other data sets require ARB to work with other State agencies and academia, as well as out-of-state resource agencies to interpret the data, and to conduct further analysis using the data.

In 2012, ARB plans to hire a contractor to develop a process to track data to detect environmental changes resulting from the U.S. Forest Protocol. ARB will also coordinate with and utilize the forestry expertise of the resource agencies during the implementation of this adaptive management plan. By working with these forestry experts and stakeholders, ARB can best ensure that the robustness of the adaptive management approach for the U.S. Forest Protocol is equal to that of the adaptive management approach for local air quality. Details as to how the data will be used will be developed through the work of the ARB contractor and the expertise of the resource agencies. That process is further described in the Review and Analysis section of this plan.

1. U.S. Forest Protocol Project Data

The proposed Regulation requires reporting of information on the performance of the forest offset projects prior to the issuance of compliance offset credits. Data reported under the U.S. Forest Protocol includes summarized forest project monitoring data, an annual update of the project's forest carbon inventory that calculates the amount of GHG reductions and carbon sequestration. This information will be in the offset project data annual report.

ARB will collect U.S. Forest Protocol data for each individual forest project. This information will be submitted annually by the project developer to ARB through the annual report. Forest project developers will assemble the annual report, and then submit it for verification to ARB or an accredited registry, and it must be verified by an ARB-accredited third party offset project verifier. ARB will not obtain this forest project level data until the first annual report is submitted during the first reporting cycle in 2013.

Based on the project type, the annual report will contain the following forest project information where applicable:

- Forest project name, location, type of project and project operator.
- Reporting period.
- Ownership, including any changes in ownership.
- Statement of compliance with all applicable laws and regulations.
- Estimated carbon stocks in all required carbon pools.
- Explanation of any decrease over a 10-year consecutive period in the standing live carbon pool.
- Description of how the project meets the definition of natural forest management.
- Projections of baseline and actual harvesting volumes from the forest project area over a 100 year period.
- Estimate of harvest volumes and associated carbon in harvested wood products.
- Estimate of mill efficiency.
- Baseline carbon estimates for all carbon pools.
- Uncertainty discount for avoided conversion projects.
- Forest carbon inventory (updated annually) following all required protocol calculation methodologies and models.
- Calculation of carbon sequestration and GHG reductions.
- Calculation of GHG removal enhancements.
- Description and explanation of the unintentional “reversal.”²
- Reversal risk rating.
- Calculation of Forest Buffer Account contribution.

This information will be useful to get a better understanding of each forest project. Each forest project is unique and may not have the same ecosystem characteristics to make comparisons amongst forest projects. Using the annual report data, ARB will work with the ARB contractor to implement a specific process to review the data sources and track data to assess potential forest impacts.

2. Forest Buffer Account Information

Due to the possibility that forest projects could unintentionally “reverse” their carbon storage because of wildfire, pest infestation, or disease, negating the benefits of those projects, ARB will create and maintain a Forest Buffer Account holding a percentage of ARB-issued compliance offset credits from forest offset projects. ARB will annually monitor the number of compliance offset credits in the Forest Buffer Account as it relates to the number of reported reversals.

The Forest Buffer Account is a mechanism to replace offset credits in the event of an unintentional reversal, thereby insuring that GHG reductions reflected in offset credits

² “Reversal” refers to an event that abruptly releases stored carbon, such as a high intensity wildfire.

are permanent. A portion of the offset credits issued to forest projects must be placed into the Forest Buffer Account to cover unintentional reversals.

3. Greenhouse Gas Mandatory Reporting Regulation (MRR)

In addition to the reporting of GHG emissions from fossil fuel combustion, the MRR also requires reporting of CO₂ emissions from biomass derived fuels, including forest biomass. As part of the recent proposed modifications to the MRR, ARB addressed stakeholder concerns related to potential increased use of forest-derived wood and wood waste. In the MRR, end users of solid biomass fuels would report the mass of fuel consumed by fuel type, and end users of forest biomass would also report location of forest biomass used.

4. ARB's Updated GHG Statewide Inventory for Forests

ARB is responsible for developing and maintaining California's statewide GHG emission inventory, which includes a sector on GHG emissions and atmospheric sequestration of CO₂ from forests and rangelands. ARB is working with U.C. Berkeley to develop a next-generation GHG inventory system for forests, rangeland, and other wildlands statewide. The contractor will develop procedures to use in combination with ground-based biometric data from the U.S. Department of Agriculture - Forest Service Forest Inventory and Analysis plots, satellite remote sensing data, and other data on disturbance processes (fire, harvest, land use conversion, etc.). This data will be used to develop estimates of CO₂ uptake and GHG emissions across the landscape statewide (at appropriate spatial and temporal scales).

5. California Forest Practices Act as Administered by CalFire

The California Forest Practices Act provides a CEQA functional equivalent process for reviewing and permitting timber harvests. This process evaluates project-level and cumulative impacts (usually at a planning watershed scale) to ensure that all impacts are mitigated to a level less than significant. Impacts to State and federally listed and non-listed species and their habitats, and water resources (e.g., watercourses, lakes, marshes, meadows and wet areas; water supply; watersheds; riparian areas) are considered, as well as soils, archaeological resources, and hazards from wildfire, insects and disease. The California Department of Forestry and Fire Protection (CalFire) inspects projects to evaluate compliance with prescribed mitigations and timber restocking, and corrective action is taken if necessary to ensure satisfactory project completion. Large landowners must develop long-term landscape-level management plans and provide regular reporting to CalFire on compliance with projected levels of timber harvesting. Some landowners also conduct ongoing surveys or monitoring of habitat or water quality at the request of other state agencies.

6. Timber Yield Tax and Harvest Values Schedules

The California State Board of Equalization has a Timber Yield Tax program that sets harvest values of timber and collects an in lieu tax when it is harvested. This data is aggregated by county and provides forest land ownership and timber harvest volumes.

7. Fire and Resource Assessment Program (FRAP)

CalFire implements the FRAP program that conducts periodic assessments of California's forests and rangelands. The forest and range assessment report includes a detailed assessment of ecosystem characteristics within California's forests.

For the 2010 assessment, FRAP's analytical framework is based on defining assets and threats specific to each subtheme. Geographic information systems (GIS) technology is used to combine or "overlay" assets and threats, to determine areas of both high value and high threat. These priority landscapes rank areas for where action is needed in terms of applying various tools that can result in the desired future landscape condition. The 2010 Assessment will also take into consideration various existing planning efforts, ranging from statewide plans (i.e., California's Wildlife Action Plan) to Community Wildfire Protection Plans. The final Assessment product will combine qualitative, quantitative, and geospatial data.

8. Geographic Information System (GIS) and Geodatabases

Several GIS databases are available that report activities and processes occurring on federal, State, and private forest lands in California. These include activities such as timber operations (i.e., road building, thinning, harvest, replanting) and non-timber related activities (i.e., prescribed burning, salvage logging in areas hit by wildfire, replanting, and treatment for disease/pest infestations). Fires of all categories are also carefully mapped using GIS.

CalFire - Forest Practice GIS

CalFire's Forest Practice GIS captures current and historic timber harvesting activities for over 4 million acres of California timberland. These data layers include silviculture, yarding, new road construction, watercourse classifications, and timberland conversions, which are tracked through GIS. Once in GIS, this information can be graphically represented on maps and is available for the analyses of local and regional cumulative impact assessments, and to meet the requirements of California's Forest Practice Rules.

Available geodatabases and GIS data layers include: Timber Harvesting Plans from 2000 to 2010; non-industrial timber management plans from 1991 to 2010; and notice of timber operations from 1991 to 2009.

U.S. Forest Service, Region 5 - GIS Clearinghouse

The U.S. Forest Service clearinghouse developed a geodatabase that maps activities (i.e. harvest, thinning, vegetation fuels management, reforestation) accomplished on national forest lands in California for the approximate period of October 2003 to December 2010.

9. Special Monitoring Projects (CalFire, Department of Fish and Game, Regional Water Quality Control Boards)

CalFire conducts a statewide monitoring program that analyzes the effectiveness of timber harvest rules and best management practices to protect water quality and also participates in cooperative instream monitoring programs in various parts of the State. Other studies are conducted by responsible State and federal agencies, including the Department of Fish and Game, Department of Conservation's California Geological Survey (previously known as the Division of Mines and Geology), and the Regional Water Quality Control Boards, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service.

V. Review and Analysis

ARB will take a stepwise approach to evaluating the data gathered as part of the adaptive management plan. In doing this, ARB will first evaluate data that will provide a forward look at potential emissions increases or forest impacts and is readily available to identify potential impacts at the earliest opportunity. The indicators that ARB investigates will be prioritized, or "tiered" based on the order in which they will be used to assess if unanticipated adverse impacts have occurred as a result of the Regulation or U.S. Forest Protocol. First tier indicators would indicate a potential environmental change. Second tier indicators would indicate if an environmental change was caused by the Regulation or U.S. Forest Protocol. Third tier indicators would indicate if an environmental change caused by the Regulation or U.S. Forest Protocol caused an adverse impact.

If the weight of evidence indicates that the answer to any of the following questions is "yes", then the evaluation moves to the next tier, ultimately culminating in the appropriate response to the adverse impact if all questions are answered in the affirmative. Staff will prioritize the order of investigations to answer the following questions:

1. Has an environmental change taken place?
If yes, then;
2. Is the environmental change caused by the Regulation or U.S. Forest Protocol?
If yes, then;
3. Has a change that is determined to be caused by the Regulation or U.S. Forest Protocol caused an adverse impact?
If yes, then;
4. Identify the options for responding and take appropriate action.

Different indicators will be used to assess the answer to these questions. The weight of evidence available from this approach will guide ARB's conclusions on whether or not the cap-and-trade regulation was the cause of a potential adverse impact.

A. Local Air Quality Impacts

Tier 1 Indicators:

Tier 1 indicators will be used to assess if a change in operation or project development has taken place that could be caused by the Regulation (determined in the Tier 2 analysis) and could result in adverse localized air quality impacts (determined in the Tier 3 analysis). If there is a positive result in screening Tier 1 indicators, ARB will initiate the next step to investigate whether the change was caused by the Regulation. Tier 1 indicators do not rely on monitoring of criteria pollutants or toxic air pollutants but do show changes in operation or project development that could result in increases in criteria pollutants or air toxics that ARB will analyze further in Tier 2 and Tier 3 (discussed below).

Indicators

- Covered facility annual GHG emissions.
- Fuel volume, or new fuel used.
- New local air district or CEC application for permit to construct or modify submitted by a facility covered by the Regulation.
- Holdings of compliance instruments.

Example Analyses

The types of analyses that draw on Tier 1 indicators may include:

- Identify covered facilities reporting an increase in annual GHG emissions through MRR.
- Identify covered facilities reporting increased fuel volume used or a new fuel used as reported through the MRR (e.g., biomass or tires).
- Identify covered facilities reporting new equipment through the MRR; investigate use of equipment and if emissions increased due to new equipment.
- Identify covered facilities that have applied for new permits for construction or modification; investigate if the project is likely to increase localized emissions and the primary driver for the new facility or modifications (cap-and-trade regulation, efficiency, etc.).
- Identify covered facilities that are holding compliance offset credits above the amount they are expected to need for compliance.
- Identify facilities or geographic regions that show GHG emissions increases greater than expected from average economic growth.
- Identify regions in the State where facilities are located and areas where multiple facility emissions could contribute to localized air quality impacts.

No single Tier 1 indicator alone would necessarily reflect that an impact caused by the Regulation has occurred. They would only reflect that there has been, or potentially could be, an environmental change. Additional investigation would be necessary if significant change is observed in one indicator or if a variety of Tier 1 indicators reflect environmental changes.

Tier 2 Indicators:

If the analysis of Tier 1 indicators indicates that there has been an environmental change, then ARB will investigate the Tier 2 indicators to assess if the environmental change was caused by the Regulation. A positive result in screening will cause initiation of the next step.

It is likely that determining the cause of a change will require the use of multiple Tier 2 indicators. Additionally, it is highly probable that most changes will have multiple causes (e.g., growing economies, changes in world-wide manufacturing trends, etc.). Potential causes identified at this time are:

- Economic growth related to recovery from the recent recession.
- Global manufacturing trends and availability of new technology.
- Changes in a company's business model.
- Dry rainfall year leading to decrease in hydroelectric power production.
- Impacts of other regulatory programs (i.e., Renewable Portfolio Standard, reduction of once-through-cooling practices for electricity generation, federal or local regulations, etc.).
- Changes in emission factors or other methodologies used to report or calculate emissions.
- Cap-and-trade regulation.

Indicators

- Forecasted economic growth.
- Facility-specific product demand.
- Consumer demand.
- Meteorological conditions (e.g., rainfall or ambient temperature).

Example Analyses

The types of analyses that draw on Tier 2 indicator data may include:

- Assess if changes in emissions are comparable to changes in the economy or consumer demand.
- Assess if manufacturing trends or changes in common business models have occurred that may result in activities that increase emissions.
- Assess if hydroelectric power production has decreased and if fossil fuel energy production increased as a result.

- Assess if there have been any regulatory or policy changes that impacted emissions.
- Monitor industry-specific trade data to assist in determining whether/where potential changes may occur.
- Assess methodology changes in how emissions are reported or calculated.

Tier 3 Indicators:

If an environmental change is attributed to the Regulation, ARB will review Tier 3 indicators to assess if the change has had an adverse impact. An increase in NO_x at a facility with a 100 foot tall exhaust stack may have no discernable impact on the local community if the design allows emissions to disperse. However, increased toxic air pollutant emissions monitored at a facility's fence line may indicate an adverse impact. As with Tier 2 indicators, it is likely that investigation of multiple indicators will be required to assess if an adverse impact to localized air quality has occurred.

Indicators

- Criteria and toxic pollutant emissions.
- Changes in ambient air quality monitoring data:
 - Criteria pollutants;
 - Toxic air pollutants; and
 - Localized monitoring networks.
- Emissions measured in facility CEMs data.
- Emissions determined in California Clean Air Act Fee Program data.

Example Analyses

The types of analyses that draw on Tier 3 indicators data may include:

- Identify covered facilities reporting an increase in facility annual emissions (criteria pollutants or toxic air pollutants) through review of local air district emission surveys, special purpose monitoring, or CEMs data; investigate reason for emissions increase.
- Identify criteria pollutant or toxic air pollutant monitoring network data indicating increased ambient concentrations; investigate reason that monitored ambient concentrations increased.
- Compare activity reported through the criteria pollutant inventory or specialized inventories supporting programs such as RECLAIM.

B. Forest Impacts

The environmental impacts analysis in the FED concluded that increased forest project related impacts attributable to the Regulation, or the U.S. Forest Protocol are unlikely based on available data and current laws that regulate forest activities. However, ARB could not determine that increases would not ever occur. ARB, therefore, committed to use an adaptive management approach as an integral part of the cap-and-trade

program to evaluate data for potential unanticipated impacts that could be caused by the Regulation, or the U.S. Forest Protocol.

ARB will use the same approach to evaluate forest impacts as is being used for local air quality impacts. Under this proposed adaptive management plan, in 2012, ARB will hire a contractor to develop and implement a specific process to track data to detect environmental changes resulting from the U.S. Forest Protocol. ARB will also coordinate with and utilize the forestry expertise of the resource agencies during the implementation of this adaptive management plan. By working with these forestry experts, ARB can best ensure that the robustness of the adaptive management approach for the U.S. Forest Protocol is equal to that of the adaptive management approach for local air quality. Details as to how the data will be used will be developed through the work of the ARB contractor and the expertise of the resource agencies.

The ARB contractor will develop Tier 1, Tier 2, and Tier 3 indicators and analyses. The ARB contractor will conduct the review and analysis under ARB's direction and the results will be incorporated into the annual adaptive management reports. Additionally, the ARB contractor will be called upon to review the usefulness of the data sources, including screening forest offset project annual report data. ARB will work with the ARB contractor to assess if any relevant data sets are missing from the list set forth in the previous section, as well as investigate the effectiveness of the existing data sources. Additionally, the ARB contractor will educate staff in general forest practices, indicators of potential forest impacts, and forest assessments and analyses.

C. Causation

In conducting the analysis, it will be necessary to consider normal variations, existing trends, and other factors that may be responsible for changes in the data. For example, air quality data can vary significantly from year-to-year because of meteorology. Additionally, changes in economic activity can produce large impacts on air quality and emissions trends, and factors such as rainfall can have significant impacts on emissions as a result of California's utilization of hydroelectric power as a source of energy.

ARB recognizes that the results of the data review are unlikely to point absolutely to the cap-and-trade regulation or U.S. Forest Protocol as the cause of a potential adverse impact, and that a judgment will need to be made based on the weight of evidence available. It is likely that it will be necessary for ARB to use several sources of data in combination to conclude that an adverse impact is attributable to the Regulation or U.S. Forest Protocol.

1. Localized Air Quality

If initial screening and analysis of the data point to a potential impact, then ARB will take steps to assess why the change occurred. An example scenario that would indicate a change to be further investigated is as follows: a new application is received by a local air district for a permit to construct or modify a cogeneration unit at a facility. For this

case, ARB would work with the local air district to obtain the details of the project and the environmental analysis. If the project is likely to increase emissions, then ARB would consult with the local air district on the impact of the new unit on overall facility emissions. If the weight of the evidence were to indicate that the cogeneration facility is 1) being proposed as a result, directly or indirectly, of the cap-and-trade regulation; and 2) would increase localized emissions and result in an adverse impact to public health, then the adaptive management plan would require ARB to move to the next step – devising and implementing a response.

2. Forest Impacts

As with potential local air quality impacts, if initial screening and analysis of the data point to a potential impact then ARB will take steps to assess the cause of the change. ARB will work with forestry experts to refine the details of the screening and analysis process to ensure that the robustness of the adaptive management approach for the U.S. Forest Protocol is equal to that of the adaptive management approach for local air quality. The areas to refine are: (1) data and data source identification (information gathering) and (2) analysis to determine whether an adverse impact is caused by the U.S. Forest Protocol (review and analysis).

VI. Response

If the process described above confirms that there has been an adverse impact to local air quality or a forest impact caused by the cap-and-trade regulation or U.S. Forest Protocol, under the adaptive management plan, ARB is committed to developing and implementing appropriate responses through a public process, including consideration and approval by the Board as necessary. ARB would work to ensure that the level of response is commensurate with the level of the impact.

ARB would consider a range of options to address localized adverse air quality impacts. These could include the adoption of additional regulatory requirements, using funds obtained from the sale of allowances to support local mitigation projects, coordination with other agencies to provide additional incentives for energy efficiency or other emission reduction activities within the community, or modifications to the Regulation.

For unanticipated impacts from the U.S. Forest Protocol, ARB could consider revising the types and/or geographic location of forest offset projects, or disallowing the use of certain types of U.S. Forest Protocol compliance offset credits. Other types of responses are also possible and would be considered and implemented as necessary.

The examples are illustrative and not intended to be an exhaustive list of appropriate responses. What responses may be appropriate depends on what impacts are identified, the specific causes of those impacts, and the responses available at some future point in time (which may be different than the responses available today). These considerations support the use of adaptive management, which will allow ARB to devise the most appropriate response should unintended consequences occur. While it is not

feasible in this plan to identify all possible future responses, it is clear that ARB has many tools available to it should unanticipated consequences occur. This plan requires that where adverse impacts related to localized air quality or to forestry occur, ARB must take appropriate action. In most cases, this will require staff to identify potential responses and promptly take a recommended response to the Board for approval.

VII. Public Process for this Adaptive Management Plan

As mentioned earlier, the Board will consider this plan at the October 20-21, 2011, Board meeting. Upon Board approval, ARB will work with stakeholders, local air districts, and resource agencies to finalize specific details of data gathering.

An important part of the public process is reporting. The first adaptive management report is planned for December 2012, and will focus on the first phase of implementation. Annually thereafter, staff will provide reports to the public and the Board on the implementation of the adaptive management plan. The annual adaptive management plan reports will, among other things, outline the data collected and the trends observed, and discuss any recommended responses.

The plan would be implemented based on the following schedule:

October 10, 2011	ARB releases Draft Adaptive Management Plan for comment.
October 20-21, 2011	Board considers Adaptive Management Plan for approval.
November 2011	Staff works with local air districts, resource agencies, and stakeholders to finalize specific details concerning data gathering under the Adaptive Management Plan.
Early 2012	ARB contracts for third-party forestry expertise.
Mid-2012	Staff updates Board on Adaptive Management Plan implementation.
December 2012	Staff releases Adaptive Management Implementation Report (prior to first compliance period).
December 2013	Staff updates Board on Adaptive Management implementation.
December 2014	Staff releases Adaptive Management Report for calendar year 2013.

December 2015	Staff releases Adaptive Management Report for calendar year 2014 and end of first compliance period.
Ongoing	Staff releases Adaptive Management Report annually.

This Page Intentionally Blank



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
CIVIL RIGHTS

June 6, 2016

Mr. Richard Corey
Executive Officer
California Air Resources Board
P.O. Box 2815
Sacramento, CA 95812

Re: EPA File No. 02R-00-R9

Dear Mr. Corey:

This letter is to advise you that the U.S. Environmental Protection Agency's (EPA) Office of Civil Rights (OCR) is resolving the complaint filed on April 17, 2000, by CALifornians for Renewable Energy, Jim MacDonald as a Trustee of the Pittsburg Unified School District, and Community Health First filed under Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7 (Title VI), and EPA's implementing regulations at 40 C.F.R. Part 7.¹ The complaint alleged discrimination based on race and national origin in violation of Title VI relating to the permitting of two natural gas-fired power plants in the city of Pittsburg, California. Specifically, Complainants alleged that actions by the California Air Resources Board (CARB) and the Bay Area Air Quality Management District (BAAQMD) relative to the permitting of the Pittsburg District Energy Facility and Delta Energy Center projects under the Clean Air Act would have a disparate impact on the basis of race and national origin, and that CARB and BAAQMD discriminated on the basis of race and national origin by failing to identify disparately impacted populations, like Pittsburg's, and to provide appropriate mitigation.

As discussed in more detail below, CARB's implementation of specific programs and activities, as well as commitments they have made to OCR over the last few months, have resulted in significant changes in the overall circumstances since the filing of the complaint. In light of these actions, OCR finds insufficient evidence of current non-compliance with Title VI or EPA's Title VI regulation. As such, OCR is closing the complaint as of the date of this letter.

OCR looked at the relationship between CARB and BAAQMD, actions CARB and BAAQMD have taken relative to the concerns raised through this complaint, and CARB's implementation

¹ Consistent with EPA's regulations, OCR offered the Complainants and BAAQMD the opportunity to pursue a resolution using alternative dispute resolution. From 2001 to 2003, the Complainants and BAAQMD participated in EPA-funded ADR. However, the ADR process was not successful.

Mr. Richard Corey

of the non-discrimination program required pursuant to EPA's regulations found at 40 C.F. R. Part 7. OCR found that in California, the California legislature has assigned responsibility for regulation of mobile sources of air pollution, among other duties, to CARB. With respect to stationary source regulation, including new source review permitting, OCR found that the California legislature assigned that responsibility to county and regional air pollution control districts such as BAAQMD. CARB retains oversight authority to monitor the performance of air district programs and may assume authority to conduct district functions if the district fails to meet certain responsibilities.

As the state agency responsible for monitoring the regulatory activity of California's local air districts, including BAAQMD, OCR writes to inform CARB of the findings and resolution of issues raised in the complaint with respect to BAAQMD. OCR found that through implementation of the *Community Air Risk Evaluation* (CARE) program, BAAQMD has made significant efforts to identify and address areas that have high concentrations of air pollution and populations most vulnerable to air pollution's health impacts which are identified as "impacted communities." For example, the initial CARE study found that diesel particulate emissions contributed 85% of the cancer risk in the Bay Area, which supported and validated programs that targeted specific sources and industries with diesel emissions.

In light of the changes to BAAQMD's programs and activities, as well as commitments BAAQMD made during the course of the investigation, including those with respect to the Pittsburg community, OCR found insufficient evidence of current non-compliance by BAAQMD with Title VI or EPA's Title VI regulations. Therefore, OCR has closed the complaint with regard to BAAQMD as of the date of OCR's enclosed letter to BAAQMD.

With regard to CARB, OCR found that CARB was not directly involved in the permitting of the two facilities named in the complaint. Moreover, OCR found that CARB has focused on reducing diesel particulate emissions which are a large contributor to cancer risk in CARE impacted communities and in Pittsburg in particular, and has committed to do so in the future. OCR found that CARB developed a 14-point program, the Diesel Risk Reduction Plan, to reduce diesel emissions in the next decade. This plan will retrofit new and existing engines with PM filters to reduce emissions. A major component of the plan calls for extensive use of low sulfur diesel fuel. California has also invested in a number of incentive programs to help the owners of diesel engines upgrade or replace them with cleaner-burning alternatives, such as compressed natural gas or electric-powered technology. For these reasons, OCR finds insufficient evidence of current non-compliance with Title VI or EPA's Title VI regulation. Therefore, OCR is closing the complaint regarding CARB as of the date of this letter.

In addition, during the course of the investigation, OCR reviewed both CARB and BAAQMD's compliance with the requirements of 40 C.F.R. Part 7, Subpart D, which form the foundational elements of a recipient's non-discrimination program. These include: continuing notice of non-discrimination under 40 C.F.R. § 7.95; adoption of grievance procedures that assure the prompt and fair resolution of complaints alleging civil rights violations under 40 C.F.R. § 7.90; and the designation of at least one person to coordinate its efforts to comply with its non-discrimination

Mr. Richard Corey

obligations under 40 C.F.R. § 7.85(g). OCR also reviewed the programs, policies, and guidance both CARB and BAAQMD are implementing to ensure they provide meaningful access by persons with limited English proficiency and persons with disabilities in all its programs and activities that receive federal financial assistance from EPA, including its public participation process.

OCR found that CARB already had in place a Bilingual Services Program² to ensure that persons with limited English proficiency are provided meaningful access to CARB's programs and activities. Similarly, OCR found that CARB had a policy in place to ensure that its programs, activities and services are accessible to persons with disabilities.³ In April 2016, when OCR began discussions with CARB, OCR learned that CARB had also recently implemented a non-discrimination policy and grievance procedure. Since that time, OCR has provided technical assistance to CARB to improve the elements of its non-discrimination program.

CARB now has a notice of non-discrimination called "Civil Rights Policy and Discrimination Complaint Process" which can be accessed on CARB's website at <http://www.arb.ca.gov/co/civil-rights-policy.htm>. The Civil Rights Policy provides notice that CARB does not discriminate on the basis of race, color, national origin, age, disability, and sex. The Civil Rights Policy also identifies the Civil Rights Officer as the point of contact for questions about filing a complaint or about the Civil Rights Policy. CARB has also adopted a grievance procedure that is contained in the Civil Rights Policy and Discrimination Complaint Process that provides complainants a prompt and impartial investigation of and response to complaints filed with CARB alleging discrimination in CARB's programs or activities prohibited by the federal non-discrimination statutes. Those interested in filing complaints are directed to CARB's "Civil Rights Complaint Form" which also can be accessed on CARB's website at <http://www.arb.ca.gov/co/civil-rights-policy.htm>.

CARB will translate its Civil Rights Policy and Discrimination Complaint Process into target languages to be made available on its website and in hard copy beginning with Spanish by June 17, 2016. It will also be in a version accessible to persons with disabilities on the website and upon request to anyone requesting information in a format not already provided as described at no cost to the requester. CARB has posted its Civil Rights Policy in the Visitor's Center of its building. CARB will insert the Civil Rights Policy in its annual report and in future annual reports and in publicly available publications as they are updated.

OCR has confirmed that CARB's Civil Rights Officer will carry out a number of important responsibilities. The Civil Rights Officer's responsibilities include coordination of grievance procedures; tracking all complaints filed with CARB under federal non-discrimination statutes including any patterns or systemic problems; updating complainants on the progress of their complaints filed with your Agency under federal non-discrimination statutes and any

² <http://www.arb.ca.gov/co/bilingual-services-complaints.htm>

³ <http://www.arb.ca.gov/html/ada/ada.htm>

Mr. Richard Corey

determinations made; conducting periodic evaluations of the efficacy of CARB's efforts to provide services, aids, benefits, and opportunities for participation in any of your Agency's programs or activities without regard to race, national origin, color, sex, disability, age or prior opposition to discrimination; providing information internally and externally regarding rights to services, aids, benefits, and participation without regard to race, national origin, color, sex, disability, age or prior opposition to discrimination; providing appropriate training for CARB employees on the non-discrimination policies and procedures and obligations to comply with federal non-discrimination statutes; and establishing grievance policies and procedures or mechanisms (*e.g.*, an investigation manual).

This letter sets forth OCR's disposition of the complaint. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such.

OCR appreciates CARB's cooperation in this matter and its efforts to ensure that CARB has in place the appropriate foundational elements of a non-discrimination program. Please do not hesitate to contact OCR regarding any questions or requests for further technical assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Lilian S. Dorka", written in a cursive style.

Lilian S. Dorka
Deputy Director, Interim Director
Office of Civil Rights

Enclosure as stated

Cc:

Christina Morkner Brown
Assistant Chief Counsel
California Air Resources Board
P.O. Box 2815
Sacramento, CA 95812

Lori Lopez
Civil Rights Officer
California Air Resources Board
P.O. Box 2815
Sacramento, CA 95812

Mr. Richard Corey

Deborah Jordan
Deputy Regional Administrator
Acting Deputy Civil Rights Official

Elise Packard
Associate General Counsel
for Civil Rights and Finance



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
CIVIL RIGHTS

June 6, 2016

Mr. Jack P. Broadbent
Executive Officer
Bay Area Air Quality Management District
375 Beale Street, Suite 600
San Francisco, CA 94105

Re: EPA File No. 02R-00-R9

Dear Mr. Broadbent:

This letter is to advise you that the U.S. Environmental Protection Agency's (EPA) Office of Civil Rights (OCR) is resolving the complaint filed on April 17, 2000, by Californians for Renewable Energy, Jim MacDonald as a Trustee of the Pittsburg Unified School District, and Community Health First filed under Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7 (Title VI), and EPA's implementing regulations at 40 C.F.R. Part 7.¹ The complaint alleged discrimination based on race and national origin in violation of Title VI relating to the permitting of two natural gas-fired power plants in the city of Pittsburg, California. Specifically, Complainants alleged that Bay Area Air Quality Management District's (BAAQMD) permitting under the Clean Air Act had a disparate impact on the basis of race and national origin, and failed to identify the disparate impact on the basis of race and national origin of criteria air pollutants, ground-level pollutants, and toxic air emissions (TACs) from projects without taking into account "elevated levels of occurrences of asthma, and breast cancer, along with increased human mortality attributable to particulate matter" and without mitigating impacts to local air quality.

As discussed in more detail below, OCR found that BAAQMD's implementation of specific programs and activities, as well as commitments it has made to OCR in the last few months, have resulted in significant changes in the overall circumstances since the filing of the complaint. In light of these actions, OCR finds insufficient evidence of current non-compliance with Title VI or EPA's Title VI regulation. As such, OCR is closing this complaint as of the date of this letter.

¹ Consistent with EPA's regulations, OCR offered the Complainants and BAAQMD the opportunity to pursue a resolution using alternative dispute resolution. From 2001 to 2003, the Complainants and BAAQMD participated in EPA-funded ADR. However, the ADR process was not successful.

Mr. Jack P. Broadbent

The two facilities mentioned in the complaint are the Delta Energy Center (DEC) and the Los Medanos Energy Center (LMEC) are located in Pittsburg, California. DEC is an 880 MW natural gas-fired combined-cycle power plant that has been in operation since May 2002. LMEC is a 555 MW natural gas-fired combined-cycle cogeneration facility that has been in operation since July 2001.

OCR found that both power plants operate under federally-enforceable operating permits requiring the use of selective catalytic reduction (SCR) and low-nitrogen oxides (NOx) burners to control emissions of nitrogen oxides. In addition, both facilities' emissions of NOx, carbon monoxide (CO), particulate matter, volatile organics and ammonia are measured using continuous emissions monitoring systems (CEMS) and/or periodic source testing. Both facilities' NOx and CO CEMS are subject to the federal Acid Rain program's rigorous calibration and quality assurance procedures found in 40 CFR Part 64.

There has not been a significant change in permitted emissions from the DEC facility since the initial title V permit was issued under the Clean Air Act.² With respect to LMEC, there has been no significant change in permitted emissions or equipment at the facility since the last reopening of the permit in 2004.³ In May 2008, BAAQMD approved a revision to the title V permit that lowered the permitted particulate emissions rates from the facility to reflect actual source test information.⁴

OCR examined the actions BAAQMD has taken over the last several years and found BAAQMD statements that reflect that, even with overall improvements in regional air quality, there were still locations in the Bay Area where air pollution levels remained relatively high, especially near localized emissions sources. In addition, BAAQMD's measurement sites still sometimes recorded episodes at levels above state and federal standards. BAAQMD also concluded that some Bay Area communities, including those with higher populations of racial or ethnic minorities that suffer poorer health, had less access to healthcare and may have been more vulnerable to the adverse health consequences of air pollution than others. Therefore, in 2004, BAAQMD initiated the *Community Air Risk Evaluation* (CARE) program to intensify efforts to reduce air pollution in areas with greatest air pollution burdens and with most vulnerable populations.

In 2009, BAAQMD's CARE program identified six "impacted communities" -- geographic areas in the region that had high pollution levels, as indicated by emissions and concentrations of

² More detail can be found in the BAAQMD DEC 4/2011 title V permit renewal statement of basis on page 4 (found at http://www.baaqmd.gov/~media/files/engineering/title-v-permits/b2095/b2095_2011-4_renewal-sob_03.pdf?la=en)

³ The BAAQMD reopened the permit for the limited purposes of: (i) responding to certain issues raised by the United States Environmental Protection Agency in its May 24, 2004, Order Denying In Part And Granting In Part Petition For Objection To Permit ("Order"); (ii) adding three sources to the permit; (iii) removing obsolete conditions; (iv) responding to changes in federal turbine standards since the permit was originally issued; and (v) incorporating certain other minor corrections and changes.

⁴ From the BAAQMD LMEC 4/2011 title V permit renewal statement of basis on page 4 (found at http://www.baaqmd.gov/~media/files/engineering/title-v-permits/b1866/b1866_2011-5_renewal-sob_03.pdf?la=en)

Mr. Jack P. Broadbent

carcinogenic toxic air contaminants (TAC), and vulnerable populations as indicated by socioeconomic factors. Pittsburg was not included at this time as an “impacted community.”

Relative to these six impacted communities, BAAQMD took a series of actions aimed at reducing the health impacts in these CARE communities. For example, the initial CARE study found that diesel particulate emissions contributed 85% of the cancer risk in the Bay Area, which supported and validated programs that targeted specific sources and industries with diesel emissions. These programs included incentives specific to regional truck traffic and controls on emissions from port and harbor activities. These controls and programs benefitted the CARE-impacted communities because they were the most exposed to diesel particulate emissions and some other TACs.

OCR found that BAAQMD updated its methodology in 2012 to identify “impacted communities.” Rather than using socioeconomic factors to represent vulnerable populations, BAAQMD used recent health records to determine mortality rates and rates of illnesses aggravated by air pollution. In addition, levels of TACs, fine particles (PM_{2.5}), and ozone levels, to which the DEC and LMEC contributed, were also considered. Cancer risks were estimated from modeled TAC concentrations. Areas with higher air pollution levels and worse health outcomes for diseases affected by air pollution were identified as impacted.

OCR also found that, in March 2014, BAAQMD identified seven “impacted communities” using the updated methodology. Two communities were added to the 2009 list and one was removed. One of the communities added was the Pittsburg/Antioch community. The area covered by several previously identified “impacted communities” was expanded. Although socioeconomic factors were not used in the 2014 CARE analysis, once “impacted communities” were identified, BAAQMD investigated the population characteristics of different areas. BAAQMD developed an index to aggregate the health impacts from toxic carcinogens, PM_{2.5}, and ozone.

OCR finds that through its CARE program, BAAQMD has made significant efforts to identify and address areas that have high concentrations of air pollution and populations most vulnerable to air pollution’s health impacts. BAAQMD has found that these areas have correlated with areas of significant populations of racial and national origin minorities. The maps of “impacted communities” generated through the CARE program are being integrated into many of BAAQMD’s programs to mitigate health impacts in these communities. The maps, along with information about pollutants and their sources, help prioritize a broad array of actions designed to foster healthy communities via the *Clean Air Communities Initiative*. These efforts address particular concerns raised in this complaint regarding whether BAAQMD was identifying minority communities disproportionately affected by higher concentrations of air pollution, such as Pittsburg, and providing appropriate mitigation for those communities.

OCR reviewed BAAQMD’s April 2014 plan “Improving Air Quality and Health in Bay Area Communities: CARE Program Retrospective and Path Forward.” This Plan outlines significant steps BAAQMD will take to improve local air quality in Pittsburg and other “impacted communities.” The 2014 Plan states that “...during the next two to three years the CARE

Mr. Jack P. Broadbent

program will prioritize developing datasets, tools, and guidance to help communities and planners avoid future air pollution exposures from local sources and to reduce existing exposures. The CARE program will also continue to integrate CARE principles into all Air District functions....” Specific actions the Plan identifies include: (1) prioritizing grant funding for projects that reduce emissions; (2) focusing enforcement activities; (3) developing new and revised regulations that consider source categories contributing to local impacts; (4) providing assistance in developing Community Risk Reduction Plans; (5) focusing outreach and community education and engagement programs; and (6) conducting special studies to measure and model local air pollution impacts. OCR has confirmed that actions discussed and identified in 2014 through this Plan are currently being implemented.

For example, BAAQMD is currently working with the City of Pittsburg to locate a toxics sampler and aethalometer (PM monitor with wood smoke identification capabilities). BAAQMD plans to have the monitor operational by the end of the year. In addition, 10 of the 11 projects selected for BAAQMD’s 2016 James Cary Smith Community Grant Program directly involve CARE communities. La Clinica de La Raza, Inc – Escuela de Promotores/Freedom Breathers received one of the grants to improve the respiratory health of Pittsburg residents through outreach, education, and through advocacy efforts which brought community-based monitoring data to the community of Pittsburg.⁵

In light of the changes to BAAQMD’s programs and activities, as well as commitments BAAQMD has made during the course of this investigation, including with respect to the Pittsburg community, OCR finds insufficient evidence of current non-compliance with Title VI or EPA’s Title VI regulation. Therefore, OCR is closing the complaint as of the date of this letter. OCR highly recommends that BAAQMD make annual update reports on the actions taken to address the air quality concerns in Pittsburg and each of the “impacted communities” readily available to the public on its website and ensure that accurate and reliable information on the air quality in Pittsburg is also readily available.

In addition, during the course of the investigation, OCR reviewed BAAQMD’s compliance with the requirements of 40 C.F.R. Part 7, Subpart D, which form the foundational elements of a recipient’s non-discrimination program. These include: continuing notice of non-discrimination under 40 C.F.R. § 7.95; adoption of grievance procedures that assure the prompt and fair resolution of complaints alleging civil rights violations under 40 C.F.R. § 7.90; and the designation of at least one person to coordinate its efforts to comply with its non-discrimination obligations under 40 C.F.R. § 7.85(g).

OCR also reviewed the programs, policies, and guidance BAAQMD is implementing to ensure it provides meaningful access by persons with limited English proficiency and persons with disabilities in all its programs and activities that receive federal financial assistance from EPA, including its public participation process. In September 2015, when EPA began discussions with BAAQMD, OCR found that BAAQMD already had in place a policy to ensure those with

⁵ <http://www.baaqmd.gov/grant-funding/residents/community-grants-program/2016-community-grant-awards>.

Mr. Jack P. Broadbent

limited English proficiency are provided meaningful access to BAAQMD's programs and activities called "Assessment of Limited English Proficient Populations and Current Services."⁶ However, other components of BAAQMD's non-discrimination program were missing. Since that time, OCR has provided technical assistance to BAAQMD as it developed the other components of its non-discrimination program.

BAAQMD now has a notice of non-discrimination called "Accessibility and Non-Discrimination Policy" (Non-Discrimination Policy) which can be accessed on BAAQMD's website at <http://www.baaqmd.gov/about-the-air-district/accessibility>. The Non-Discrimination Policy not only provides notice that BAAQMD does not discriminate on the basis of race, color, national origin, age, disability, and sex, but provides notice of services available for those with disabilities. The Non-Discrimination Policy also identifies the Non-Discrimination Coordinator as the point of contact for questions about filing a complaint or about the Non-Discrimination Policy. Those interested in filing complaints are currently directed to contact the Non-Discrimination Coordinator. The website will also include a link to learn how and where to file a complaint of discrimination.

By August 1, 2016, BAAQMD will translate its Non-Discrimination Policy into target languages and these will be available on its website and in hard copy. It will also be in a version accessible to persons with disabilities on the website and upon request to anyone requesting information in a format not already provided as described at no cost to the requester.

BAAQMD has posted its Non-Discrimination Policy in electronic format (*i.e.*, scrolling informational publicly accessible monitor) near the front door of its building. BAAQMD will insert the Non-Discrimination Policy in its annual report and in future annual reports and in publicly available publications as they are updated.

BAAQMD has also adopted a grievance procedure that is contained in BAAQMD's "Non-Discrimination Policy and Complaint Process" (Complaint Process) that provides complainants a prompt and impartial investigation of and response to complaints filed with BAAQMD alleging discrimination in BAAQMD's programs or activities prohibited by the federal non-discrimination statutes. By August 1, 2016, BAAQMD will translate its Complaint Process in target languages and make these available online and in paper formats.

OCR has confirmed that BAAQMD's Non-Discrimination Coordinator will carry out a number of important responsibilities. The Non-Discrimination Coordinator's responsibilities include coordination of grievance procedures; tracking all complaints filed with BAAQMD under federal non-discrimination statutes including any patterns or systemic problems; updating complainants on the progress of their complaints filed with BAAQMD under federal non-discrimination statutes and any determinations made; conducting periodic evaluations of the efficacy of BAAQMD's efforts to provide services, aids, benefits, and opportunities for participation in any

⁶<http://www.baaqmd.gov/~media/Files/Communications%20and%20Outreach/Community%20Outreach/Community%20Language%20Assessment/LEP%20Report%20111510.aspx>

Mr. Jack P. Broadbent

of BAAQMD's programs or activities without regard to race, national origin, color, sex, disability, age, or prior opposition to discrimination; providing information internally and externally regarding rights to services, aids, benefits, and participation without regard to race, national origin, color, sex, disability, age, or prior opposition to discrimination; providing appropriate training for BAAQMD employees on the non-discrimination policies and procedures and obligations to comply with federal non-discrimination statutes; and establishing grievance policies and procedures or mechanisms (e.g., an investigation manual).

While BAAQMD has a detailed Public Participation Plan that describes how BAAQMD works to engage persons with limited English proficiency and explains different ways for residents to express concerns, questions, and comments, it fails to provide guidance as to how those with disabilities may participate in BAAQMD public involvement activities. BAAQMD will address the absence of information in the Public Participation Plan regarding access for those with disabilities by providing the Accessibility and Non-Discrimination Policy which does provide that information on accessibility for those with disabilities through language contained in board meeting agendas, publications, front door notifications, and the website. OCR recommends that the next time BAAQMD updates its Public Participation Plan that BAAQMD include appropriate provisions for those with disabilities.

This letter sets forth OCR's disposition of the complaint. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such.

OCR appreciates BAAQMD's cooperation in this matter, BAAQMD's work to address air quality issues in the Bay Area particularly through the CARE program, and BAAQMD's efforts to ensure that CARB has in place the appropriate foundational elements of a non-discrimination program. With regard to the actions that BAAQMD has committed to complete by August 1, 2016, please direct the documentation to my attention at Dorka.Lilian@epa.gov. Please do not hesitate to contact OCR regarding any questions or requests for further technical assistance.

Sincerely,



Lilian S. Dorka
Deputy Director, Interim Director
Office of Civil Rights

Cc:

Brian Bunker
Counsel
Bay Area Air Quality Management District
375 Beale Street, Suite 600
San Francisco, CA 94105

Mr. Jack P. Broadbent

Rex Sanders
Non-Discrimination Coordinator
Bay Area Air Quality Management District
375 Beale Street, Suite 600
San Francisco, CA 94105

Deborah Jordan
Deputy Regional Administrator
Acting Deputy Civil Rights Official

Elise Packard
Associate General Counsel
for Civil Rights and Finance

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 5/16/2017 4:01:31 PM
To: Lee, Anna, Public Health, OOD [Anna.Lee@acgov.org]
Subject: RE: FYI OAB: Report on first City-Agency meeting

For sure, thanks...

From: Lee, Anna, Public Health, OOD [mailto:Anna.Lee@acgov.org]
Sent: Tuesday, May 16, 2017 8:56 AM
To: Grow, Richard <Grow.Richard@epa.gov>
Subject: RE: FYI OAB: Report on first City-Agency meeting

Hope it's okay that I forward this summary to my directors. Thanks.

From: Grow, Richard [mailto:Grow.Richard@epa.gov]
Sent: Friday, May 12, 2017 8:32 AM
To: Marvin, Cynthia@ARB <cynthia.marvin@arb.ca.gov>; Yura, Elizabeth@ARB <eyura@arb.ca.gov>; David Vintze <DVintze@baaqmd.gov>; Alison Kirk <AKirk@baaqmd.gov>; Lee, Anna, Public Health, OOD <Anna.Lee@acgov.org>
Subject: FYI OAB: Report on first City-Agency meeting

FYI - Below is the summary of the meeting as reported to my own management. Any comments or corrections welcome.

Richard

All

Yesterday I attended the first of three meetings planned by the City of Oakland to engage relevant agencies (CARB, BAAQMD, Alameda County Public Health and EPA) on proposed air quality mitigation plans for 3 segments of the OAB. This was the first such meeting since the December 13, 2016 meeting between EPA, DOT, DHS, the City, Port and other stakeholders regarding the OAB. Last year the City attempted to hold similar meetings separately with CARB and BAAQMD, which by most accounts have been unproductive. These were also the first meetings since the April 4 filing of a Title VI complaint and since DOT's having provided technical assistance to the City and Port regarding public engagement, as requested by the City coming out of the December meetings.

Whether the meeting will prove productive remains to be seen. Discussions on mitigation measures were quite specific, with the City coming away from the meeting with several concrete recommendations from the attending agencies. The next step will be for the City to discuss those recommendations with the developer and, out of those discussions, further refine the proposed mitigation plans for these parcels of land. Once the City has what it feels is adequate plans, it will release those plans per the (currently) standard 17 day public review process after which it intends to finalize the plans.

Regarding process: Early in the meeting the City responded to the question of whether this process represents the City's response to the request made of the City and Port at the December meeting for suggestions on improving the current process to address previously noted inadequacies. The City noted that it had just recently (May 3) met with DOT on improving its processes, and stated that (1) this meeting was itself an enhancement of the previous process, in meeting with the relevant agencies before publicly releasing the plans, (2) it was in the process of developing a public engagement plan for this project and (3) it was also going to develop a plan meeting DOT's procedural requirements for

compliance with Title VI. I took this to mean that this one meeting should be seen as an indicator but not a benchmark for the City's intention to improve its public engagement for the OAB redevelopment.

Regarding adequacy of air mitigation plans generally: In the context of the state/local agencies criticisms of the vagueness of several measures in these proposed plans, I reminded the City that these same four agencies had met extensively with the City and Port several years prior (2008-9) around an analogous plan – the Port's "Maritime Air Quality Improvement Plan" or MAQIP. I further described that towards the end of that process the agencies had taken a joint position, responding to the vagueness of many of the MAQIP measures, that among the key elements of a valid mitigation plan were that (1) measures should be concrete and specific, (2) have well defined timetables, (3) have clarity regarding implementing parties, and (4) be enforceable.

Several other concerns were raised by the agencies include the piecemeal nature of the review process, ongoing uncertainties regarding future uses of OAB lands, and most generally whether this process is likely to be any more productive than the past.

The next meeting is scheduled for May 18 from 1:30-3:00 in City offices. Please let me know if you would like further discussion.

Richard

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 1/3/2018 10:56:42 PM
To: Brian Beveridge [brian.woeip@gmail.com]
Subject: Docs: Meeting notes - 010908.doc
Attachments: MAQIP ARB April 2009 ARB Letter on Port of Oakland Plan FINAL.doc; BAAQMD Resolution 2009-3 MAQIP.pdf; BAAQMD letter 12.05.08.pdf; MAQIP IAG recs final 4 page document.pdf; MAQIP IAG recs 11-19-08 cover letter.pdf; ARB MAQIP ltr 1_7_08.doc

Brian – for your reading enjoyment and other uses, several documents indicating concerns by various agencies re the MAQIP process and product. My guess is the 1/7/08 letter us the one referred to in the notes. RG

From: Brian Beveridge (через Google Диск) [mailto:brian.woeip@gmail.com]
Sent: Wednesday, January 03, 2018 2:43 PM
To: Grow, Richard <Grow.Richard@epa.gov>
Subject: Meeting notes - 010908.doc

Пользователь Brian Beveridge открыл Вам доступ к следующему документу:



Meeting notes - 010908.doc



Richard. Do you happen to have the letter from CARB that is mentioned in these notes from the Jan 2008 Social Justice committee? It spelled out what CARB considered to be a good plan document.

Brian

[Открыть](#)

Google Диск. Ваши файлы всегда у вас под рукой.
Google Inc. 1600 Amphitheatre Parkway, Mountain View, CA 94043, USA

Google™



Linda S. Adams
Secretary for
Environmental Protection

Air Resources Board

Mary D. Nichols, Chairman
1001 I Street • P.O. Box 2815
Sacramento, California 95812 • www.arb.ca.gov



Arnold Schwarzenegger
Governor

January 7, 2008

Ms. Delphine Prevost, Project Manager
Maritime Air Quality Improvement Plan
Port of Oakland
530 Water Street, 7th floor
Oakland, California 94607

Dear Ms. Prevost:

The Air Resources Board (ARB) staff would like to thank the Maritime Port of Oakland (the Port) for the opportunity to provide comments on the Proposed Lists of Primary Interest and Secondary Interest Air Quality Initiatives for Potential Implementation (referred to as the List or List of Initiatives). The List is to be used in the Maritime Air Quality Improvement Plan (MAQIP or Plan). While we are not a formal member of the Task Force that is developing the Plan, we are keenly interested in the final outcome of this planning process. We have been participating as a technical consultant during the MAQIP process. As we are all aware, emissions related to activities at the Port are significant and contribute to adverse public health impacts in nearby and surrounding communities.

We understand that the List of Initiatives will be a “well” from which the Port and other stakeholders can voluntarily draw upon to reduce emissions from Port-related activities. The ideas on the List of Initiatives will be used to meet the Port’s air quality goals, beyond what ARB regulations will achieve in the future. The ARB does not believe that voluntary measures are sufficient to meet public health protection goals. We strongly suggest that the Port and Task Force revisit the idea of voluntary actions and instead adopt firm commitments to actions that have interim goals and specific timeframes in the MAQIP.

The proposed goal for the MAQIP is an 85 percent reduction based on a medium growth scenario from a 2005 baseline inventory. Based on the presentations by the Port staff at the December 14, 2007, Task Force meeting, it appears that the Port is projecting that ARB regulations will achieve an 81 percent reduction of particulate matter emissions from the Port by 2020. The List of Initiatives provides opportunities for

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website: [[HYPERLINK http://www.arb.ca.gov](http://www.arb.ca.gov)].

California Environmental Protection Agency

Ms. Delphine Prevost, Project Manager
January 7, 2008
Page [PAGE]

the Port, their tenants, and other stakeholders to achieve the remaining four percent of emission reductions needed to attain the proposed 85 percent goal for 2020 as proposed by the Task Force. The ARB believes that the Port and their tenants should strive for more than just a four percent reduction in emissions by 2020. Actions can be taken sooner than ARB regulations require that will result in emission reductions prior to the 2020 timeframe.

As currently written, the draft List has about 85 very briefly stated primary and secondary initiatives that contain little or no detail. Several of the primary and secondary initiatives appear to either duplicate actions already required by ARB regulations or are less stringent than those regulations. In addition, we have more detailed comments and questions on a number of the initiatives. As a result, we would like to schedule a conference call to discuss the List of Initiatives with you. I have asked Mr. Dan Donohoue, Chief of our Emissions Assessment Branch, to contact you to schedule a conference call.

We are committed to working with the Port, the Task Force, and other stakeholders to expeditiously reduce emissions associated with Port operations. The List of Initiatives is a good start. However, we recommend that the Port and the Task Force review this List and select those that will result in real emission reductions. Once chosen, we recommend the Port establish a firm commitment to these initiatives and identify the emission reduction goals and timeframes. We believe that our comments may be of assistance to you in that effort and we look forward to that discussion.

Again, thank you for providing us an opportunity to comment. If you have any questions, please call me at (916) 324-8167, or call Mr. Donohoue at (916) 322-6023.

Sincerely,

/s/

Robert D. Fletcher, Chief
Stationary Source Division

cc: See next page.

Ms. Delphine Prevost, Project Manager
January 7, 2008
Page [PAGE]

cc: Mr. Omar Benjamin, Co-Chair MAQIP Task Force
Executive Director
Port of Oakland
530 Water Street
Oakland, California 94604-2064

Mr. Brian Beveridge, Co-Chair MAQIP Task Force
West Oakland Environmental Indicators Project
1747 14th Street
Oakland, California 94607

Mr. Jack Broadbent, Co-Chair MAQIP Task Force
Executive Officer
Bay Area Air Quality Management District
939 Ellis Street
San Francisco, California 94109

Mr. Andy Garcia, Co-Chair MAQIP Task Force
Executive Vice President
GSC Logistics, Inc.
530 Water Street, 5th Floor
Oakland, California 94607

Mr. Scott McCreary, Ph.D
Principal
Concurr, Inc.
1832 Second Street
Berkeley, California 94710

Mr. Daniel E. Donohoue, Chief
Emissions Assessment Branch
Stationary Source Division
Air Resources Board

Ms. Carolyn Suer
Staff Air Pollution Specialist
Emissions Assessment Branch
Stationary Source Division
Air Resources Board

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

RESOLUTION No. 2009- 03

A Resolution of the Board of Directors of the Bay Area Air Quality Management District Urging the Board of Port Commissioners for the City of Oakland to incorporate specific actions in the proposed Maritime Air Quality Improvement Program

WHEREAS, the Board of Port Commissioners for the City of Oakland has adopted a laudable and important policy to reduce health risks attributable to port operations by 85% by 2020;

WHEREAS, in 2006, the Port of Oakland established a Task Force to develop a Maritime Air Quality Improvement Plan (MAQIP);

WHEREAS, the Executive Officer of the Bay Area Air Quality Management District (BAAQMD) served as a co-chair of the Task Force;

WHEREAS, the Task Force met eight (8) times over a two-year period;

WHEREAS, the Task Force represented a well-rounded forum for multiple perspectives and advice to the Port of Oakland staff on the necessary elements for a successful comprehensive air quality plan;

WHEREAS, at the request of the Task Force, participating government agencies formed an Interagency Working Group to coordinate the implementation of the air quality improvement strategies identified in the MAQIP;

WHEREAS, the proposed final MAQIP which will be reviewed and considered for adoption by the Board of Port Commissioners for the City of Oakland at public meetings in March and April 2009 lacks specifics on the implementation of several key air quality improvements that will contribute to the Port's 2020 health risk reduction goals;

WHEREAS, the Executive Officer of the BAAQMD and his designees have conveyed in direct meetings, public forums and written comments concerns regarding the lack of key implementations steps for control measures;

WHEREAS, the Ad Hoc Committee on Port Emissions of the BAAQMD discussed the status of the proposed final MAQIP at its meeting on March 12, 2009;

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Bay Area Air Quality Management District does hereby oppose the adoption of the proposed final MAQIP unless amended to include the following, as proposed by the Interagency Working Group:

- The adoption of a container use fee of no less than \$12.50 per loaded twenty-foot equivalent unit (TEU);

- A policy to expend the first three years of revenues from the container use fee on air quality improvement efforts at the Port of Oakland that will reduce health risk in the western Oakland area;
- A policy to expend the first two years of revenue exclusively on assisting trucking firms and individual truck owners doing business at the Port of Oakland in purchasing used and new trucks that are compliant with the California Air Resources Board emission standards for 2007 and newer model year engines, as set forth in Section 1956.8, Title 13, California Code of Regulations;
- A policy to expend the third and subsequent years of revenue from the use fee on clean trucks and infrastructure for shore power systems for marine vessels docking at the marine terminals;
- The adoption by January 1, 2010 of an incentive program for the use of marine diesel oil with a sulfur content less than 0.5% by weight in ocean-going vessels transiting to or from, or berthing at, the Port of Oakland between January 1, 2010 and December 31, 2011;
- The adoption of a Port policy to continue the low-sulfur marine diesel oil incentive program beyond December 31, 2011 if the California Air Resources Board's regulation on marine fuels, as set forth in Section 2299.2, Title 13, California Code of Regulations, is rendered inactive;


BE IT FURTHER RESOLVED that the Board of Directors of the Bay Area Air Quality Management District does hereby encourage the inclusion in the final MAQIP the following additional measures:

- The implementation by September 1, 2009 of a procedure to refuse entrance to Port properties of trucks that are not registered in the statewide drayage truck registry established and maintained by the California Air Resources Board;
- The implementation by January 1, 2010 of a procedure to refuse entrance to Port properties of trucks that are not in compliance with the California Air Resources Board's Air Toxic Control Measure for drayage trucks as set forth in Section 2027, Title 13, California Code of Regulations;
- The adoption of a Port policy to include in all new or renegotiated leases conditions requiring the use of low-sulfur marine diesel oil in all vessels transiting to and from, and berthing at terminals in the Port of Oakland.
- The adoption of a Port policy to include in all new or renegotiated leases conditions requiring the use of shore-power connections in all vessels berthing at terminals in the Port of Oakland.
- The commitment to publish updated emission inventories from sources operating at the Port of Oakland on a biennial schedule beginning with calendar year 2008.

BE IT FURTHER RESOLVED, that the Board of Directors of the Bay Area Air Quality Management District does hereby authorize the Executive Officer of the BAAQMD or his designee to undertake such other efforts as are appropriate to convey the District position on this issue.

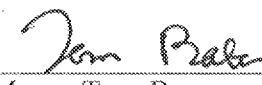
The foregoing resolution was duly and regularly introduced, passed and adopted at a regular meeting of the Board of Directors of the Bay Area Air Quality Management District on the Motion of Director MILEY, seconded by Director GIOIA, on the 18th day of MARCH, 2009 by the following vote of the Board:

AYES: BATES, DALY, DUNNIGAN, GARNER, GIOIA, GROOM, HOSTERMAN,
KISHIMOTO, KLATT, MAR, MILEY, ROSS, SHIMANSKY, SPERING,
NOES: UILKEMA, WAGENKNECHT, YEAGER, ZANE, TORLIATT
NONE.
ABSENT: BROWN, HAGGERTY, KNISS



Mayor Pamela Torliatt
Chairperson of the Board of Directors

ATTEST:



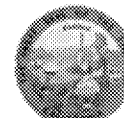
Mayor Tom Bates
Secretary of the Board of Directors



Linda S. Adams
Secretary for
Environmental Protection

Air Resources Board

Mary D. Nichols, Chairman
1001 I Street • P.O. Box 2815
Sacramento, California 95812 • www.arb.ca.gov



Arnold Schwarzenegger
Governor

Mr. Victor Uno, President
Board of Port Commissioners
Port of Oakland
530 Water Street
Oakland, California 94607

Dear Mr. Uno:

On July 14, 2008, the Air Resources Board (ARB) staff submitted comments supporting the Oakland Board of Port Commissioners' goal for an 85 percent reduction in community health risks from exposure to diesel particulate matter (PM) emissions from the Port's maritime operations by 2020. We further stated that it is essential that the Maritime Air Quality Improvement Plan (MAQIP) articulate the air quality goals, then clearly define and quantify a comprehensive emission reduction strategy that will be implemented to meet those goals. To instill confidence that the MAQIP will deliver on the Port's promise to the West Oakland community to cut the health risk from air pollution, such a strategy must include firm commitments and deadlines for specific actions by the Port.

With its new supplement, the MAQIP scheduled for consideration on April 7, 2009, has been substantially strengthened from earlier versions, but, unfortunately, does not yet contain all the needed commitments to clean-up measures. Rather than approve the plan as proposed, we urge the Port Board to:

- Postpone action on agenda item M-1 "Approval of the MAQIP and MAQIP Supplement No. 1," and direct staff to make further revisions. These revisions should include a defined strategy for Port action to aid the transition to cleaner drayage trucks, including prioritizing use of the proposed cargo fee for this purpose. Port staff has stated that the Comprehensive Truck Management Program (CTMP) under development will define the Port's role and commitments for cleaner trucks.

Along with direction to staff to accelerate the CTMP for consideration this May/June, we ask you to defer the MAQIP until it can be modified to reflect specific commitments and deadlines for Port action to expedite the cleanup of existing diesel drayage trucks. The November 19, 2008, joint letter to the Port Board from ARB and the Bay Area Air Quality Management District provides further recommendations on trucks as a foundation for the CTMP and a revised MAQIP.

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website: [[HYPERLINK http://www.arb.ca.gov](http://www.arb.ca.gov)].

Mr. Victor Uno, President

Page [PAGE]

- Approve agenda item M-2 "Authorization to Proceed with the Use of \$2 Million of Port Funds to Retrofit Drayage Trucks and to Use up to \$3 Million of Port Funds as Matching Funds for Additional Drayage Truck Retrofits and to Amend the Agreement With the Bay Area Air Quality Management District (BAAQMD) to Reflect Such Changes as Necessary." This proposed restoration of Port funds to facilitate installation of diesel soot filters, and potentially replace the oldest trucks, is a essential first step to cleaning up the existing drayage truck fleet. With the deadlines for truck upgrades under ARB's statewide rule coming up at the end of 2009, this initial funding cannot wait.

ARB staff also participated on the Interagency Group formed to provide comment and direction to Port staff on the MAQIP. In November 2008, the Interagency Group submitted comments urging "that concrete steps be taken in the Plan to clearly demonstrate the Port's strong commitment to improving air quality." The Group included specific recommendations for actions and timelines in that letter. We are encouraged to see some elements of those recommendations reflected in MAQIP Supplement No. 1. ARB urges the Port to fully embrace the recommendations of the Interagency Group and commit to actions the Port will take to implement the recommendations in the near-term.

Thank you for the opportunity to comment to the Oakland Board of Port Commissioners on your consideration of the proposed MAQIP and restoration of Port funding for drayage truck upgrades. If you or your fellow Commissioners would like to discuss these recommendations, please contact me at (916) 322-2890.

Sincerely,

Michael H. Scheible
Deputy Executive Officer

cc: See next page.

Mr. Victor Uno, President

Page [PAGE]

cc: Margaret Gordon, Vice-President
Board of Port Commissioners
Port of Oakland
530 Water Street
Oakland, California 94607

Anthony Batarse, Jr, Commissioner
Board of Port Commissioners
Port of Oakland
530 Water Street
Oakland, California 94607

Pamela Calloway, Commissioner
Board of Port Commissioners
Port of Oakland
530 Water Street
Oakland, California 94607

James Head, Commissioner
Board of Port Commissioners
Port of Oakland
530 Water Street
Oakland, California 94607

Kenneth Katzoff, Commissioner
Board of Port Commissioners
Port of Oakland
530 Water Street
Oakland, California 94607

Mark McClure, Commissioner
Board of Port Commissioners
Port of Oakland
530 Water Street
Oakland, California 94607

Mr. Omar Benjamin
Executive Director
Port of Oakland
530 Water Street
Oakland, California 94607

Continued next page.

Mr. Victor Uno, President

Page [PAGE]

cc: (continued)

Mr. Brian Beveridge, Co-Chair
MAQIP Task Force
West Oakland Environmental
Indicators Project
1747 14th Street
Oakland, California 94607

Mr. Jack Broadbent, Co-Chair
MAQIP Task Force
Executive Officer
Bay Area Air Quality Management District
939 Ellis Street
San Francisco, California 94109

Mr. Andy Garcia, Co-Chair
MAQIP Task Force
Executive Vice President
GSC Logistics, Inc.
530 Water Street, 5th Floor
Oakland, California 94607

Ms. Deborah Jordan, Director
Air Division, Region 9
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, California 94105

Mr. Richard Sinkoff
Director of Environmental Programs
and Planning
Port of Oakland
530 Water Street
Oakland, California 94607

Mr. Victor Uno, President

Page [PAGE]

bcc: (via email)

James Goldstene, EO
Cynthia Marvin, PTSD
Linda Murchison, PTSD
Dan Donohoue, SSD
Peggy Taricco, SSD
Cherie Rainforth, SSD
Mike Tollstrup, SSD
Mike Miguel, SSD
Carolyn Suer, SSD
Judy Friedman, PTSD
Catherine Cardozo, PTSD
Bruce Oulrey, CO

(external)

Ms. Anne Whittington
Maritime Air Quality Improvement Plan
Port of Oakland
530 Water Street
Oakland, California 94607

November 19, 2008

Omar Benjamin, Executive Director
Maritime Committee
Port of Oakland
530 Water Street
Oakland, CA 94607

Dear Director Benjamin and Port of Oakland Maritime Committee:

The members of the Maritime Air Quality Improvement Plan (MAQIP) Interagency Group are pleased to submit to you the attached document, entitled, "Proposed Near-Term Implementation Plan".

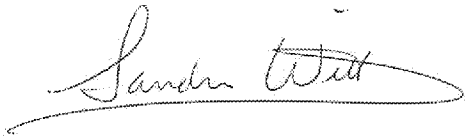
We would like to take the opportunity to congratulate the Port Board of Commissioners for establishing a goal of 85% reduction in health risks by 2020. We appreciate that the Port created a multi-stakeholder task force to assist with the development of the MAQIP and the revised version of the MAQIP reflects many recommendations that the taskforce members contributed.

Our Interagency group feels it is very important for the Port Commission to take some additional concrete steps to make the MAQIP a plan that clearly demonstrates the Port's strong commitment to improving air quality and the health of Oakland residents who live near the Port. The attached document outlines concrete actions and specific timelines that the Port can take to reduce or eliminate negative health impacts. These are actions that we believe are critical to ensuring the MAQIP attains its stated goals. The Interagency Group would like the Near-Term Implementation Plan to accompany the MAQIP. It is our hope that this proposal will be discussed during the Port's Maritime Committee meeting, scheduled for November 20, 2008 and as a result, moved forward to the full Board for review, discussion and approval.

The Interagency group of the MAQIP is comprised of representatives from California Air Resources Board, Bay Area Air Quality Management District, Environmental Protection Agency, City of Oakland, Alameda County Public Health Department, Alameda County Environmental Health Department, Alameda County Board of Supervisors, and the Port of Oakland. If you

should have any questions concerning our proposal please contact Dr.
Sandra Witt (Alameda County Public Health Department) at 510-267-8018.

Sincerely,

A handwritten signature in cursive script that reads "Sandra Witt". The signature is written in dark ink and has a fluid, connected style.

Sandra Witt
Alameda County Public Health Department

Cynthia Marvin
California Air Resources Board

Jean Roggenkamp
Bay Area Air Quality Management District

Amy Zimpfer
US Environmental Protection Agency

Supervisor Keith Carson
Alameda County Board of Supervisors

Supervisor Nate Miley
Alameda County Board of Supervisors

Pamela Evans
Alameda County Environmental Health

Proposed Near-Term Implementation Plan for
PORT OF OAKLAND MARITIME AIR QUALITY IMPROVEMENT PLAN

Summary of Concrete Actions to be Taken by the Port
to Help Reduce the Health Risk from Diesel Particulate Matter from Seaport Sources 85% by 2020

The MAQIP (Table 9-3) includes an expansive list of primary and secondary air quality initiatives to cut emissions and health risk, increase efficiency, and reduce community impacts. These initiatives rely on possible future actions by the Port and its partners (including other agencies and the Port's tenants and customers) to successfully implement them.

The Port of Oakland is demonstrating its leadership and commitment to the MAQIP by itemizing the concrete actions the Commission and staff will take to expedite the Port's own emission control measures (Table 8-2) in several key areas. The most significant actions the Port can take in the near-term to achieve the goals of the MAQIP are: (1) to establish a source of continued funding for early action incentives, (2) to transition the fleet of port drayage trucks to much cleaner models by the end of 2009, and (3) to embrace and promote the use of shore-based power for ships at dock. Longer-term, the Port will also vigorously pursue efficiency improvements that can provide concurrent economic and environmental benefits. Accomplishing these major tasks in a timely fashion will build public confidence in the effectiveness of the MAQIP and the Port's ability to deliver on its promises.

OBJECTIVES AND PORT ACTIONS	RESPONSIBLE ENTITY	TIMEFRAME FOR ACTION
Near-Term Objective: Generate substantial new funding for incentives to accelerate pollution reduction programs		
• Adopt a user fee of \$12.50/TEU (\$25/container)	Commission	December 2008
• Establish Port policy to dedicate at least the first 3 years of fee revenue to air quality projects to reduce the existing health risk (for port trucks, for shore power and other projects)	Commission	December 2008 – March 2009
• Begin collection of fee	Staff	October 2009

MAQIP Interagency Proposed Near-term Implementation Plan for Discussion at 11/20/08 Maritime Committee

OBJECTIVES AND PORT ACTIONS	RESPONSIBLE ENTITY	TIMEFRAME FOR ACTION
Near-Term Objective: Quickly clean up the fleet of 2,000 diesel trucks that frequently serve the Port to cut pollution in West Oakland and neighboring communities		
<ul style="list-style-type: none"> Establish Port policy to move the clean truck strategy ahead of the pending comprehensive truck management plan to support compliance with the 2009 deadline in the Air Resources Board's (ARB) rule, ensure trucks are available to legally carry cargo to and from the Port without disruption, and maximize the Proposition 1B funding available for this purpose 	Commission	December 2008
<ul style="list-style-type: none"> Amend the existing Memorandum of Understanding (MOU) with the Bay Area Air Quality Management District (District) to allow the Port's \$5 million in committed funds to be used for truck replacements after demand for retrofits is exhausted 	Commission BAAQMD	December 2008 - January 2009
<ul style="list-style-type: none"> Develop and implement a financing mechanism to leverage the first 3 years of user fee revenues to make the funds available in 2009 for clean truck projects 	Commission Staff	December 2008 January - June 2009
<ul style="list-style-type: none"> Develop an expanded MOU with the District to provide advance funds in 2009 from the user fees to leverage new commitments in 2009 in State, District and regional funding for cleaner trucks 	Commission Staff BAAQMD	December 2008 January-February 2009
<ul style="list-style-type: none"> Negotiate and establish bulk purchase prices for new trucks (like the Ports of Los Angeles and Long Beach) 	Commission City Staff	January 2009 February – June 2009
<ul style="list-style-type: none"> Consider amendments to Prop 1B Guidelines to allow truckers who get retrofit funds to also apply for replacement funds 	ARB	January 2009
<p>Interagency group will pursue other sources of funding for the clean truck strategy including but not limited to economic development grants, economic stimulus funds, Transportation, West Coast Collaborative, small business grants and loans, and others.</p>	Interagency group	December 2008- February 2009

OBJECTIVES AND PORT ACTIONS	RESPONSIBLE ENTITY	TIMEFRAME FOR ACTION
Near-Term Objective: Take the leadership role in bringing shore-based power to all cargo ship berths to dramatically cut ship pollution at dock		
<ul style="list-style-type: none"> Establish a Port policy to promote and enable the use of shore power at all cargo ship berths to comply with ARB's rule to reduce emissions from ships at dock 	Commission	December 2008 – January 2009
<ul style="list-style-type: none"> Provide staff report to the public and the Commission on proposed funding sources for shore-side infrastructure, including State monies (directly or through the District), a tariff on the terminal operators, lease requirements, and/or other means 	Staff	January – May 2009
<ul style="list-style-type: none"> Work with marine terminal operators, carriers, Pacific Gas and Electric and others to design a plan for installation of shore power at marine terminals and modification of ships to accept that power (compliance plans are due to ARB by July 2009 under State regulation). 	Staff	January – June 2009
<ul style="list-style-type: none"> Develop an incentive-based program to increase the usage of low-sulfur marine fuels in ocean-going vessels that visit the Port. The incentives will target fuels with sulfur content below the level required by ARB's regulation. Establish a Port policy to implement the fuel incentive program if the California Air Resources Board's fuel regulation for ocean-going vessels is rescinded, overturned or otherwise not enforced. 	Commission, Staff Shipping Lines	January – June 2009 for program development

OBJECTIVES AND PORT ACTIONS	RESPONSIBLE ENTITY	TIMEFRAME FOR ACTION
Mid-Term Objective: Increase operational efficiency to reduce emissions of air pollutants and support Port growth		
<ul style="list-style-type: none"> • Provide staff report to the public and the Commission on recommended Port strategies to increase efficiency at sea, on Port property, and along transportation corridors 	Staff	Mid-2010

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 1/3/2018 8:44:10 PM
To: Brian Beveridge [brian.woeip@gmail.com]; Margaret Gordon [margaret.woeip@gmail.com]
Subject: Basic perspective: Maritime Air Quality Improvement Plan Update: Task Force engagement

Ms. Margaret & Brian

Beyond the many process questions around the MAQIP reconvening, there is also a fundamental question as to the technological standards. From my participation in many internal and interagency discussions here since the filing of the complaint it has become obvious that the most basic question is whether the Port is *systematically* considering the *best available* approaches being considered and/or implemented at other ports and goods movement communities. The term *systematic* implies a rational, transparent and well documented process in which the factors being considered (technical feasibility, economics, legal authorities and constraints etc.) are identified, addressed and weighed in support of a documented decision as to whether any particular approach is to be adopted, deferred for further study, piloted or discarded. As a practical example one might ask whether everything being done at the ports of LA/LB are being considered in such a manner.

This is the question I would bring to any discussion and, in my personal view, would be a minimum requirement for a credible and worthwhile process.

RG

From: Grow, Richard
Sent: Wednesday, January 03, 2018 12:06 PM
To: 'Brian Beveridge' <brian.woeip@gmail.com>; Margaret Gordon <margaret.woeip@gmail.com>
Subject: RE: Maritime Air Quality Improvement Plan Update: Task Force engagement

Brian and Ms. Margaret – Thanks for including me in this. My only constraint is that on Monday January 8 I will be en route by plane from New Mexico. Any time other than that I can make, but don't feel compelled to work around my schedule. Richard

From: Brian Beveridge [<mailto:brian.woeip@gmail.com>]
Sent: Tuesday, January 02, 2018 7:40 PM
To: rsinkoff@portoakland.com
Cc: margaret.woeip@gmail.com; Scott McCreary <scott@concurinc.net>; Laura Arreola <larreola@portoakland.com>; Catherine Mukai <cmukai@portoakland.com>; Amy Tharpe <atharpe@portoakland.com>; Grow, Richard <Grow.Richard@epa.gov>
Subject: Re: Maritime Air Quality Improvement Plan Update: Task Force engagement

Hi Richard

Happy New Year! I saw that you were doing some baking over the holidays! Where's my slice?

Ms. Margaret and I have discussed our potential participation in the MAQIP Update Task Force and we would meet with your team to discuss our concerns about the process going forward. I won't go into detail here, but we have a clear and finite list of issues that we feel need to be addressed before this can be a successful update process for all stakeholders.

We are available next week, Monday, Wednesday or Thursday after 1pm. We would like to have Richard Grow sit in as an observer, but we will leave our EarthJustice lawyers at home, if the Port agrees to do the same.

003592 2020-10-29

regards, Brian

"(Community) resilience can be understood as place-based cultural practice that defines how residents survive in neighborhoods that already look broken, yet function due to existing social networks, tacit knowledge, and local histories." - Hector Fernando Burga

BRIAN BEVERIDGE, Co-Director
West Oakland Environmental Indicators Project
349 Mandela Pkwy.
Oakland, Ca. 94607
510-257-5645
WWW.WOEIP.ORG

On Tue, Jan 2, 2018 at 3:16 PM, Richard Sinkoff <rsinkoff@portoakland.com> wrote:

Good afternoon Ms. Margaret and Brian,

First, Happy New Year! I hope that you both enjoyed a beautiful New Year's celebration (and Ms. Margaret, a beautiful birthday too!)

I am reaching out to see if you might have some time to meet Scott McCreary and the Port (Laura, Catherine and I) to chat about your interest in serving on the MAQIP Task Force.

The Port is reconvening the Task Force in January, February, March 2018 to consider emissions reduction measures to achieve the -85% diesel particulate matter (DPM) reduction goal.

I know that Scott reached out to Ms. Margaret about two weeks ago and that Ms. Margaret expressed her views and concerns regarding the Task Force.

I hope that we can meet to discuss your concerns and reflect these in the planning for the MAQIP Update.

I look forward to hearing from you at your earliest convenience.

Best always,

Richard

Richard Sinkoff

Director of Environmental Programs and Planning

Port of Oakland

510-627-1182

rsinkoff@portoakland.com

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 1/3/2018 8:06:33 PM
To: Brian Beveridge [brian.woeip@gmail.com]; Margaret Gordon [margaret.woeip@gmail.com]
Subject: RE: Maritime Air Quality Improvement Plan Update: Task Force engagement

Brian and Ms. Margaret – Thanks for including me in this. My only constraint is that on Monday January 8 I will be en route by plane from New Mexico. Any time other than that I can make, but don't feel compelled to work around my schedule. Richard

From: Brian Beveridge [mailto:brian.woeip@gmail.com]
Sent: Tuesday, January 02, 2018 7:40 PM
To: rsinkoff@portoakland.com
Cc: margaret.woeip@gmail.com; Scott McCreary <scott@concurinc.net>; Laura Arreola <larreola@portoakland.com>; Catherine Mukai <cmukai@portoakland.com>; Amy Tharpe <atharpe@portoakland.com>; Grow, Richard <Grow.Richard@epa.gov>
Subject: Re: Maritime Air Quality Improvement Plan Update: Task Force engagement

Hi Richard

Happy New Year! I saw that you were doing some baking over the holidays! Where's my slice?

Ms. Margaret and I have discussed our potential participation in the MAQIP Update Task Force and we would meet with your team to discuss our concerns about the process going forward. I won't go into detail here, but we have a clear and finite list of issues that we feel need to be addressed before this can be a successful update process for all stakeholders.

We are available next week, Monday, Wednesday or Thursday after 1pm. We would like to have Richard Grow sit in as an observer, but we will leave our EarthJustice lawyers at home, if the Port agrees to do the same.
regards, Brian

"(Community) resilience can be understood as place-based cultural practice that defines how residents survive in neighborhoods that already look broken, yet function due to existing social networks, tacit knowledge, and local histories." - Hector Fernando Burga

BRIAN BEVERIDGE, Co-Director
West Oakland Environmental Indicators Project
349 Mandela Pkwy.
Oakland, Ca. 94607
510-257-5645
WWW.WOEIP.ORG

On Tue, Jan 2, 2018 at 3:16 PM, Richard Sinkoff <rsinkoff@portoakland.com> wrote:

Good afternoon Ms. Margaret and Brian,

First, Happy New Year! I hope that you both enjoyed a beautiful New Year's celebration (and Ms. Margaret, a beautiful birthday too!)

I am reaching out to see if you might have some time to meet Scott McCreary and the Port (Laura, Catherine and I) to chat about your interest in serving on the MAQIP Task Force.

The Port is reconvening the Task Force in January, February, March 2018 to consider emissions reduction measures to achieve the -85% diesel particulate matter (DPM) reduction goal.

I know that Scott reached out to Ms. Margaret about two weeks ago and that Ms. Margaret expressed her views and concerns regarding the Task Force.

I hope that we can meet to discuss your concerns and reflect these in the planning for the MAQIP Update.

I look forward to hearing from you at your earliest convenience.

Best always,

Richard

Richard Sinkoff

Director of Environmental Programs and Planning

Port of Oakland

510-627-1182

rsinkoff@portoakland.com

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 7/11/2017 2:16:27 PM
To: Strauss, Alexis [Strauss.Alexis@epa.gov]
Subject: RE: Oakland Army Base & Port of Oakland

I shared with CARB, BAAQMD and County Health, noting that this was in response to a request from Ken Alex. Haven't shared with EIP, although as interagency communication I assume it is FOIA-able.

From: Strauss, Alexis
Sent: Monday, July 10, 2017 4:00 PM
To: Grow, Richard <Grow.Richard@epa.gov>
Cc: LUEHE, DOUGLAS <luehe.douglas@epa.gov>; Garnett, Desean <Garnett.Desean@epa.gov>
Subject: Oakland Army Base & Port of Oakland

From: Strauss, Alexis
Sent: Monday, July 10, 2017 4:00 PM
To: 'Ken.Alex@gov.ca.gov' <Ken.Alex@gov.ca.gov>
Subject: Oakland Army Base & Port of Oakland

Dear Ken,

Thank you for our recent discussion of environmental and public health issues associated with development of the Port of Oakland and Oakland Army Base (OAB). As requested, following are our main concerns and a list of potential federal funding opportunities.

West Oakland, a largely minority community, experiences a disproportionate exposure to toxic air contaminants. While diesel particulate emissions have been significantly reduced in recent years, substantial progress is still needed and within reach. One key barrier is the lack of resolution of concerns raised by various environmental and public health agencies regarding inadequacies in the OAB mitigation plan, approved by the City in 2012. The shortcomings of the mitigation plan date to the City's expedited CEQA process in 2012 which bypassed the normal interagency and public discussion of whether the many "significant but unavoidable" impacts were in fact avoidable. Since then, there has been an ongoing reluctance to further develop or implement the measures in the plan, in particular those applicable to the operational phase of the project. This is at the heart of understanding why the past five years of discussions have not yielded progress.

This is the right time for the City, Port and developer to avail themselves of existing opportunities to adopt state-of-the-art low-or-zero emissions strategies, making use of many public and private funding opportunities. BAAQMD and CARB's technical advice has been invaluable to date. Now, other catalysts may be needed to bring about resolution of outstanding issues. As you know, the community has filed a complaint under Title VI of the Civil Rights Act, based on obligations which the City and Port incurred through receipt of federal funds.

As requested, here is a list of federal funding opportunities that may be relevant to the OAB and Port. Substantial federal funding has previously been provided to the City and Port as described on the attached spreadsheet. The list is incomplete, covering \$153 million from DOT, EPA and Homeland Security for FY 2009 through FY 2014, but does not include the monetary value of the OAB transfer from the federal government to the City in 2001.

US EPA: Diesel Emission Reductions Act Grant program Funding - \$34M available. Due date – July 5, 2017. <https://www.epa.gov/cleandiesel/clean-diesel-national-grants#rfp>

www.epa.gov

US DOT: <https://www.transportation.gov/grants>

www.transportation.gov

u.s. department of transportation. 1200 new jersey avenue, se. washington, dc 20590. 855-368-4200

FASTLANE funding: <https://www.transportation.gov/buildamerica/FASTLANEgrants>

www.transportation.gov

Fostering Advancements in Shipping and Transportation for the Long-term Achievement of National Efficiencies (FASTLANE) Grants program

US DOE: Clean Cities Coalitions sometimes have funding: <https://cleancities.energy.gov/funding-opportunities/>

cleancities.energy.gov

Securing funding is critical to the success of efforts to cut petroleum use in transportation. Funding opportunities for Clean Cities projects are available from many ...

Volkswagen settlement information: <https://www.epa.gov/vw>. Note: Port cargo handling equipment, ferries/tugs, shorepower, rail, truck and bus eligibility in Appendix D of the partial CD: <https://www.epa.gov/enforcement/third-partial-and-30l-second-partial-and-20l-partial-and-amended-consent-decree> (see Appendix D-2 of 2.0L partial CD).

www.epa.gov

This is the third partial, 3.0 liter second partial consent decree, 2.0 liter partial and amended partial consent decree for the Volkswagen Clean Air Act Settlement ...

I hope this is helpful. I'm hopeful we can work together to bring about resolution of these issues.

Kind regards,

Alexis

Alexis Strauss
Acting Regional Administrator
E.P.A. Region 9
75 Hawthorne Street
San Francisco, CA 94105
415-972-3572

003598 2020-10-29

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 7/11/2017 2:12:59 PM
To: cynthia.marvin@arb.ca.gov; Yura, Elizabeth@ARB [eyura@arb.ca.gov]; David Vintze [DVintze@baaqmd.gov]; Alison Kirk [AKirk@baaqmd.gov]; 'Lee, Anna, Public Health, CAPE' [Anna.Lee@acgov.org]
Subject: FW: Oakland Army Base & Port of Oakland
Attachments: Copy of FFA to Oakland CA Stakeholders.pdf

Colleagues

This went out yesterday afternoon from Acting Regional Administrator Alexis Strauss to Ken Alex, Director of the Governor's Office of Planning and Research. It was sent in response to a request by Ken Alex during a call regarding the OAB on June 19 in which EPA was asked to provide its concerns and a list of federal funding opportunities.

Richard

From: Strauss, Alexis
Sent: Monday, July 10, 2017 4:00 PM
To: 'Ken.Alex@gov.ca.gov' <Ken.Alex@gov.ca.gov>
Subject: Oakland Army Base & Port of Oakland

Dear Ken,

Thank you for our recent discussion of environmental and public health issues associated with development of the Port of Oakland and Oakland Army Base (OAB). As requested, following are our main concerns and a list of potential federal funding opportunities.

West Oakland, a largely minority community, experiences a disproportionate exposure to toxic air contaminants. While diesel particulate emissions have been significantly reduced in recent years, substantial progress is still needed and within reach. One key barrier is the lack of resolution of concerns raised by various environmental and public health agencies regarding inadequacies in the OAB mitigation plan, approved by the City in 2012. The shortcomings of the mitigation plan date to the City's expedited CEQA process in 2012 which bypassed the normal interagency and public discussion of whether the many "significant but unavoidable" impacts were in fact avoidable. Since then, there has been an ongoing reluctance to further develop or implement the measures in the plan, in particular those applicable to the operational phase of the project. This is at the heart of understanding why the past five years of discussions have not yielded progress.

This is the right time for the City, Port and developer to avail themselves of existing opportunities to adopt state-of-the-art low-or-zero emissions strategies, making use of many public and private funding opportunities. BAAQMD and CARB's technical advice has been invaluable to date. Now, other catalysts may be needed to bring about resolution of outstanding issues. As you know, the community has filed a complaint under Title VI of the Civil Rights Act, based on obligations which the City and Port incurred through receipt of federal funds.

As requested, here is a list of federal funding opportunities that may be relevant to the OAB and Port. Substantial federal funding has previously been provided to the City and Port as described on the attached spreadsheet. The list is incomplete, covering \$153 million from DOT, EPA and Homeland Security for FY 2009 through FY 2014, but does not include the monetary value of the OAB transfer from the federal government to the City in 2001.

US EPA: Diesel Emission Reductions Act Grant program Funding - \$34M available. Due date – July 5, 2017. <https://www.epa.gov/cleandiesel/clean-diesel-national-grants#rfp>

www.epa.gov

US DOT: <https://www.transportation.gov/grants>

www.transportation.gov

u.s. department of transportation, 1200 new jersey avenue, se. washington, dc 20590. 855-368-4200

FASTLANE funding: <https://www.transportation.gov/buildamerica/FASTLANEgrants>

www.transportation.gov

Fostering Advancements in Shipping and Transportation for the Long-term Achievement of National Efficiencies (FASTLANE) Grants program

US DOE: Clean Cities Coalitions sometimes have funding: <https://cleancities.energy.gov/funding-opportunities/>

cleancities.energy.gov

Securing funding is critical to the success of efforts to cut petroleum use in transportation. Funding opportunities for Clean Cities projects are available from many ...

Volkswagen settlement information: <https://www.epa.gov/vw>. Note: Port cargo handling equipment, ferries/tugs, shorepower, rail, truck and bus eligibility in Appendix D of the partial CD: <https://www.epa.gov/enforcement/third-partial-and-30l-second-partial-and-20l-partial-and-amended-consent-decree> (see Appendix D-2 of 2.0L partial CD).

www.epa.gov

This is the third partial, 3.0 liter second partial consent decree, 2.0 liter partial and amended partial consent decree for the Volkswagen Clean Air Act Settlement ...

I hope this is helpful. I'm hopeful we can work together to bring about resolution of these issues.

Kind regards,

Alexis

Alexis Strauss
Acting Regional Administrator
E.P.A. Region 9
75 Hawthorne Street
San Francisco, CA 94105
415-972-3572

FEDERAL FINANCIAL ASSISTANCE TO OAKLAND OAB STAKEHOLDERS						POP End Date
Fed Agency	Recipient	Amount	Program	Project	Year	
EPA	CALSTART	\$85,473	DERA	Oakland Airport for DPFs on transit buses	FY2008	
EPA	BAAQMD	\$2,000,000	DERA ARRA	Trucks at Port of Oakland	FY2009	
EPA	BAAQMD	\$1,557,987	DERA	Trucks at Port of Oakland	FY2011	
EPA	BAAQMD	\$898,933	DERA	Trucks at Port of Oakland	FY2012	
EPA	Port of Oakland	\$277,885	DERA	Crane retrofits and repowers	FY2013	
Total EPA		\$4,820,278				
DOT/FAA	Port of Oakland	\$7,324,827	Airport Improvement Program		FY2016	
DOT/FAA	Port of Oakland	\$11,395,060	Airport Improvement Program		FY2015	
DOT/FAA	Port of Oakland	\$41,578,114	Airport Improvement Program		FY2014	
DOT/FAA	Port of Oakland	\$18,245,770	Airport Improvement Program		FY2013	
DOT/MARAD	Port of Oakland	\$15,000,000	National Infrastructure Investments (TIGER grant)		FY2013	
DOT/FHWA	CA DOT / Port of Oakland (Sub)	\$312,263			FY2015	
DOT/FHWA	CA DOT / Port of Oakland (Sub)	\$983,928			FY2013	
Total DOT		\$94,839,962				
DHS	Port of Oakland	\$7,620,950.00	Port Security Grant		FY2009	6/30/2013
DHS	Port of Oakland	\$3,543,750.00	Port Security Grant		FY2012	3/31/2015
DHS	Port of Oakland	\$2,204,000.00	Port Security Grant		FY2013	4/30/2017
DHS	City of Oakland	\$144,679.00	Port Security Grant		FY2013	12/31/2015
DHS	City of Oakland	\$25,000.00	Port Security Grant		FY2013	8/31/2015
DHS	Port of Oakland	\$1,326,938.00	Port Security Grant		FY2014	8/31/2016
DHS	City of Oakland	\$578,527.00	Port Security Grant		FY2014	8/31/2016
DHS	Marine Exchange of the San Francisco Bay Area / Port of Oakland (Sub)	\$1,392,557	Port Security Grant		FY2009	
DHS	Marine Exchange of the San Francisco Bay Area / City of Oakland (OES) (Sub)	\$525,300	Port Security Grant		FY2009	
DHS	Marine Exchange of the San Francisco Bay Area / Port of Oakland (Sub)	\$221,560	Port Security Grant		FY2010	
DHS	Marine Exchange of the San Francisco Bay Area / Port of Oakland (Sub)	\$2,329,512	Port Security Grant		FY2010	
DHS	Marine Exchange of the San Francisco Bay Area / City of Oakland (OES) (Sub)	\$682,694	Port Security Grant		FY2010	
DHS	Marine Exchange of the San Francisco Bay Area / City of Oakland (OES) (Sub)	\$190,808	Port Security Grant		FY2011	
DHS	Marine Exchange of the San Francisco Bay Area / City of Oakland (OES) (Sub)	\$210,000	Port Security Grant		FY2011	
DHS	City of Oakland	\$1,001,910	National Urban Search and Rescue (US&R) Response System		FY2009	
DHS	City of Oakland	\$1,045,500	National Urban Search and Rescue (US&R) Response System		FY2010	
DHS	City of Oakland	\$13,671	National Urban Search and Rescue (US&R) Response System		FY2010	
DHS	City of Oakland	\$921,734.33	Staffing for Adequate Fire & Emergency Response Grants (SAFER)		FY 2009	
DHS	City of Oakland	\$300,000.00	Fire Grants		FY 2009	
DHS	City of Oakland	\$307,223.90	Staffing for Adequate Fire & Emergency Response Grants (SAFER)		FY 2010	
DHS	City of Oakland	\$272,000.00	Fire Grants		FY 2010	
DHS	City of Oakland	\$1,167,078.00	National Urban Search & Rescue (US&R) Response System Readiness Cooperative Agreement		FY 2011	
DHS	City of Oakland	\$210,642.00	Fire Grants		FY 2011	
DHS	City of Oakland	\$789,360.00	Fire Grants		FY 2011	
DHS	City of Oakland	\$1,261,108.00	National Urban Search & Rescue (US&R) Response System Readiness Cooperative Agreement		FY 2012	
DHS	City of Oakland	\$7,782,240.00	Staffing for Adequate Fire & Emergency Response Grants (SAFER)		FY 2012	
DHS	City of Oakland	\$11,928.00	Fire Grants		FY 2012	
DHS	Port of Oakland	\$3,414,315.91	Port Security Grant Program		FY 2012	
DHS	City of Oakland	\$1,167,154.00	National Urban Search & Rescue (US&R) Response System Readiness Cooperative Agreement		FY 2013	
DHS	City of Oakland	\$33,001.95	National Urban Search & Rescue (US&R) Response System Readiness Cooperative Agreement		FY 2013	
DHS	City of Oakland	\$246,514.00	Fire Grants		FY 2013	
DHS	Port of Oakland	\$2,204,000.00	Port Security Grant Program		FY 2013	
DHS	City of Oakland	\$144,678.00	Port Security Grant Program		FY 2013	
DHS	City of Oakland	\$0.00	Port Security Grant Program		FY 2013	
DHS	City of Oakland	\$1,258,131.00	National Urban Search & Rescue (US&R) Response System Readiness Cooperative Agreement		FY 2014	
DHS	City of Oakland	\$4,268,112.00	Staffing for Adequate Fire & Emergency Response Grants (SAFER)		FY 2014	
DHS	Port of Oakland	\$1,326,938.00	Port Security Grant Program		FY 2014	
DHS	City of Oakland	\$578,527.00	Port Security Grant Program		FY 2014	
DHS	City of Oakland	\$1,229,582.00	National Urban Search & Rescue (US&R) Response System Readiness Cooperative Agreement		FY 2015	
DHS	City of Oakland	\$49,151.00	National Urban Search & Rescue (US&R) Response System Readiness Cooperative Agreement		FY 2015	
DHS	City of Oakland	\$1,269,582.00	National Urban Search & Rescue (US&R) Response System Readiness Cooperative Agreement		FY 2016	
Total DHS		\$53,270,357				
Grand total		152,930,597				

Message

From: Grow, Richard [Grow.Richard@epa.gov]
Sent: 12/28/2017 8:15:28 PM
To: Reyes, Deldi [Reyes.Deldi@epa.gov]
Subject: RE: old post re Oakland and planning

I suspect the plan still matters and remember coming to some meetings. Cutting across all of these is Anna Lee, contact info below, who followed two other dynamite public health staffers, all of whom spent time working for Toy Iton, now across the Street at the Endowment.

Anna Lee

Local Policy Coordinator

Place Matters, Office of the Director

Alameda County Public Health Department

1000 Broadway, Suite 500

Oakland, CA 94607

anna.lee@acgov.org | Phone: (510) 267-8019

Like us on Facebook | Visit our Website

From: Reyes, Deldi
Sent: Thursday, December 28, 2017 11:58 AM
To: Grow, Richard
Subject: old post re oakland and planning

Okay, so I know this post is 2 years old and East (not West) Oakland but—the reference to the City of Oakland's planning dept's participation in the "Healthy Development Guidelines" is interesting. Assuming this went nowhere? And perhaps now subsumed by SB1000 and requirement for EJ element to be included in general plan?

Excerpt:

The purpose of the meeting was to demonstrate to our new city leader the critical importance of a tool called the Healthy Development Guidelines that is being created by East Oakland BHC's Land Use Work Group in partnership with resident leaders, the City of Oakland Bureau of Planning, Alameda County Public Health Department Place Matters, developers, architects, and other technical experts. See more photos from the meeting with Mayor Schaaf.<<https://www.flickr.com/photos/eastoaklandbhc>> What the Healthy Development Guidelines is meant to do is to help city planners ensure that new development projects mitigate negative health impacts (air pollution) and promote the positive impacts (good jobs), according to a set of standards for the environment, safety, economic opportunity, culture and community, food, transportation, housing, and open space and recreation.

<http://eastoaklandbhc.org/oakland-residents-speak-truth-mayor/>

RUN-DON'T WALK

Deldi Reyes
Environmental Justice Program Manager | U.S. Environmental Protection Agency | Region 9
Enforcement Division | Tel 415.972.3795 | reyes.deldi@epa.gov

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 6/30/2017 6:50:51 PM
To: Margaret Gordon [margaret.woeip@gmail.com]; Brian Beveridge [brian.woeip@gmail.com]
Subject: Re: Env. Defense Fund explanation/discussion of air quality data for Oakland

Thanks. BTW I couldn't get the documents to open, nor could Carol using her gmail account. Any chance of just sending the documents themselves without having to go thru Google ?

From: Margaret Gordon <margaret.woeip@gmail.com>
Sent: Friday, June 30, 2017 11:16 AM
To: Grow, Richard
Subject: Env. Defense Fund explanation/discussion of air quality data for Oakland

Where Oakland City Hall, 3rd floor ConfRoom - Building Bridges
map

Calendar Patricia McGowan

Source Env. Defense Fund explanation/discussion of air quality data for Oakland

Description It is being rescheduled for Monday July 10, 11am at Oakland City Hall, Building Bridges Conference room, third floor (same floor as the Mayor's office). Fern U. from the Environmental Defense Fund will explain the air quality data that was collected for West Oakland and downtown Oakland. The attached outlook item contains the links to the data for your use and reference before the meeting. Thank you and I hope to see you can attend. Patricia McGowan City of Oakland 510-238-3588

Attachment 

EDF AQ cover letter to Mayor Schaaf.pdf



EDF AQ press release final.pdf

--

Ms. Margaret Gordon/Co-Director
West Oakland Environmental Indicators Project
349 Mandela Parkway
Oakland, CA 94607
510-257-5647 Direct line
www.woeip.org

Public Outreach (Added to SCA/MMRP by City Council, July 16, 2013; pp 46-47)

Mitigation PO-1 (Stakeholder Review of Air Quality and Trucking Plans): The City of Oakland (“City”) and Prologis CCIG Oakland Global, LLC (“Developer”) shall engage the public in the development of the following plans required by the SCA/MMRP related to potential air quality and trucking impacts on the surrounding area during construction and operation of the project (the “Subject Plans”):

- ☐ SCA AIR-1 (Construction Management Plan)
- ☐ SCA AIR-2 (Construction-Related Air Pollution Controls)
- ☐ Mitigation 4.3-7 (Truck Management Plan)
- ☐ Mitigation 4.4-3b (Maritime and Rail-Related Emissions Reduction Plan)
- ☐ Mitigation 4.4-4 (Truck Diesel Emission Reduction Plan)
- ☐ Mitigation 4.4-5 (Transportation Control Measures)
- ☐ Mitigation 4.4-6 (Energy-Conserving Fixtures and Designs)
- ☐ Mitigation 5.4-1 (Demonstration Projects)
- ☐ SCA TRANS-1 (Parking and Transportation Demand Management)
- ☐ SCA TRANS-2 (Construction Traffic and Parking)
- ☐ Mitigation 4.3-13 (Traffic Control Plan – Hazardous Materials)

a. Stakeholder List. The City shall maintain a list of the names and electronic mail addresses of the stakeholders that have expressed an interest in receiving information on the Subject Plans (the “Stakeholder List”). The Stakeholder List shall include the recipients of the July 3, 2013, letter related to the Construction Management Plan for the Public Improvements (which included SCA AIR-1, SCA AIR-2, SCA TRANS-2, MM 4.3-13 and SCA 4.4-6) and such additional stakeholders that submit a written request to the City to be added to the Stakeholder List.

b. Quarterly Meetings. Beginning in September of 2013 and continuing until such time as the City Administrator has approved all of the Subject Plans, the City and the Developer shall jointly host quarterly meetings to discuss the status of the Subject Plans. The City and the Developer shall make a good faith effort to schedule the meetings at a day/time to maximize Stakeholder attendance. The meetings shall be noticed via electronic mail to all parties included in the Stakeholder List providing at least ten (10) calendar days’ prior notice of the time and place of the meeting.

c. Notice of Plan Review. The party responsible for the preparation and implementation of the applicable Subject Plan shall provide at least forty five (45) calendar days’ prior notice of the date that a draft of the applicable Subject Plan shall be available for review pursuant to Item (d) below. Such notice shall be delivered via electronic mail to the parties included in the Stakeholder List. The notice shall include an express reference to the specific SCA/MMRP requiring the applicable Subject Plan. The requirement set forth in this item (c) shall not apply to the Construction Management Plan for the Public Improvements (which included SCA AIR-1, SCA AIR-2, SCA TRANS-2, MM 4.3-13 and SCA 4.4-6) because said plans were released on July 3, 2013. However, the subsequent development of plans pursuant to SCA AIR-1, SCA AIR-2, SCA TRANS-2, MM 4.3-13 and SCA 4.4-6 with respect to vertical improvements will be subject to this item (c).

d. Public Review and Comment Period. Prior to approving any draft Subject Plan, the City shall provide the parties included in the Stakeholder List with seventeen (17) calendar days within which to review and provide written comments to any draft Subject Plan, and such written comments must be received by the City no later than 5:00 p.m. on the seventeenth day; provided, however, if the seventeen (17) day period expires on any day other a business day, the expiration date shall be extended to 5:00 p.m. on the next business day. The seventeen (17) day period shall be initiated by the City’s electronic mail to the parties included in the Stakeholder List. During the 17-day public review and comment period the City shall make the draft Subject Plan available for public review such as posting the document on the City’s website.

e. Informational Council Presentation. City staff shall provide the City Council with an informational presentation of each approved Subject Plan within ninety (90) calendar days after the City Administrator’s approval of such Subject Plan. Such presentation shall include a summary of the public outreach implemented pursuant to this mitigation measure and the requirements and goals of the applicable approved Subject Plan.

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 8/23/2017 4:12:39 PM
To: BANDROWSKI, MIKE [Bandrowski.Mike@epa.gov]
Subject: Randolph: off to Oakland at 10 or so

Yes there is (something you need to do) – read my note to you yesterday at 1:09. The call/meeting needs more prep but I’m stuck as to how to proceed during the Colleen/Meredith overlap with neither of them really responding to my suggested list of “topics” for an agenda which I sent out yesterday morning. Per a note from Colleen yesterday at 3:28 I am going to send Mike Sundblom the call-in information and am considering using that note to suggest/solicit an agenda. What I’m mainly missing is any idea what Colleen and Meredith discussed, if anything, about this issue with Sundblom et al while they were all in AZ last week. RG

From: BANDROWSKI, MIKE
Sent: Wednesday, August 23, 2017 9:04 AM
To: Grow, Richard <Grow.Richard@epa.gov>
Subject: RE: off to Oakland at 10 or so

Sounds good. I see a bunch of messages on Randolph. I will go through them later today, but maybe you can let me know if there is anything I need to do in the short term. Thanks.

Mike Bandrowski | Manager, Office of Air Toxics, Radiation and Indoor Air
U.S. Environmental Protection Agency | Region 9 | Air Division, Air-6 | 75 Hawthorne St |
San Francisco, CA 94105 | Tel 415.947-4194 | bandrowski.mike@epa.gov

From: Grow, Richard
Sent: Wednesday, August 23, 2017 9:02 AM
To: BANDROWSKI, MIKE <Bandrowski.Mike@epa.gov>
Subject: off to Oakland at 10 or so

Mike – I’ll be heading off to Oakland for meetings with city staff on OAB (along with BAAQMD et al) around 10. Will finish rest of afternoon (2 on ?) from home.

Richard

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 8/23/2017 4:01:30 PM
To: BANDROWSKI, MIKE [Bandrowski.Mike@epa.gov]
Subject: off to Oakland at 10 or so

Mike – I'll be heading off to Oakland for meetings with city staff on OAB (along with BAAQMD et al) around 10. Will finish rest of afternoon (2 on ?) from home.

Richard

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 7/14/2017 10:55:13 PM
To: jbbroadbent@baaqmd.gov; dbreen@baaqmd.gov
Subject: Port/OAB - presentation, Title VI

Jack and Damian

Excellent presentation today, the discussion was quite constructive as well as revealing. I'm hoping you can share the Powerpoint so that I can share it with my management and staff involved in freight issues.

The point I was trying to make about the importance of clarifying barriers for each suggested measure has to do with, among other things, the pending Title VI investigation, which I suspect will be formally initiated within the next couple weeks. Oversimplifying somewhat, ultimately resolution of a civil rights complaint such as this one comes down to questions of the "availability of less discriminatory alternatives." And while "availability" does not have a clear or simple working definition, any clarity coming out of your current initiative as to why various parties (in particular the City and Port, being subject to the complaint) take the position that they cannot or will not adopt particular measures will be helpful. I suggested differentiating between legal, technical and economic barriers, but would welcome a different categorization if you see that as more meaningful.

I should also note that in a discussion with DOT and EPA HQ civil rights offices last week, the issue of "subject matter" expertise came up and my management took the position that BAAQMD and CARB should be seen as national experts on the environmental issues relevant to the complaint. I should also mention that the working assumption shared by most of us involved in the complaint is that it would be greatly preferable to head as directly as possible for resolution rather than going through a prolonged and arduous investigative process.

Thanks again.

Richard

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 5/16/2017 3:48:50 PM
To: Fitzpatrick, Ryan (OST) [ryan.fitzpatrick@dot.gov]
Subject: Org chart: OAB - City roles and potential conflicts
Attachments: OAB_Horizontal ORG Chart_C.PNG; TIGER II WOEIP letter to DOT.doc; FHWA 2013 03 20 WOEIP Response.pdf; OAB CCG Org chart 2010.pdf

This attachment of the OAB org chart opens easier

From: Grow, Richard
Sent: Tuesday, May 16, 2017 8:41 AM
To: Fitzpatrick, Ryan (OST) <ryan.fitzpatrick@dot.gov>
Subject: OAB - City roles and potential conflicts

Ryan

I was recently provided the attached org chart shedding more light on Claudia Cappio's various roles with respect to the OAB over the past 17 years. The relevance, or lack thereof, of this information is unclear to me, but given her role as the current Assistant City Administrator, and as senior staff within the Administration in charge of resolving the OAB issues, I thought it best to keep you informed.

Whatever relevance there is may be tied to the role of the EIR Addendum which, with its documentation of several "significant but unavoidable" impacts, and its bypass of normal CEQA public review processes (not applicable to an addendum), lies at the heart of the unresolved OAB issues. Specifically, there is the issue of whether those "significant" impacts have been adequately determined to be "unavoidable", which would appear to be somewhat analogous to the Title VI requirements regarding the availability of less discriminatory alternatives.

Per the attached org chart, Ms. Cappio was working directly for the OAB developer Phil Tagami in the role of "CEQA Consultant" in the period leading up to (but not including) the City Council's approval of the EIR/Addendum in June of 2012. After leaving Tagami's project she began working again for then Governor Jerry Brown who, in his role as Oakland Mayor (1999-2007) had overseen the City taking over of the OAB when it was transferred from the DoD in the 1999-2001 time frame. As you may recall, by some accounts the foreshortened CEQA process for the EIR/Addendum was driven in part by the demands by the California Transportation Commission (CTC) that the City finalize its long-delayed final reuse plans for the OAB in order to secure \$242M in CTC funding. The CTC itself, while nominally independent, is governed by 11 commissioners, 9 of them appointed by the Governor.

Some but not all of these details were known by the community (and ourselves) when the WOEIP wrote to the FHWA (Stew Sonnenberg, Sacramento regional office) in 2013 objecting to what the WOEIP described as the City's misuse of FHWA's TIGER funds which had been provided to the City (in 2010-2011) to carry out its obligations to fulfill CEQA requirements for the OAB, i.e. to prepare the documents which became the EIR/Addendum. The FHWA Regional office, after consulting with FHWA attorneys at HQ/DC (per conversation with staff at our office) wrote back to the WOEIP that the City had complied with its contract with FHWA. WOEIP letter and FHWA response attached.

Almost as an aside, but further contributing to the community's concerns, the present Mayor, Libby Schaaf, was a City Council member in 2012 when the Council approved the EIR/Addendum. Whether there are any conflicts implied in all of this is far outside my expertise, but it may be relevant to the concern raised by the community that the City should not be entrusted with the responsibility for leading the process to resolve the issue of the adequacy of the OAB mitigation plan, and specifically whether the significant unresolved impacts are in fact "unavoidable."

Below is a newsclip from 2015 on Claudia Cappio's trajectory.

003610 2020-10-29

Richard

Mayor hires familiar face to oversee Oakland development

April 6, 2015

A familiar face is returning to Oakland to lead the city's development efforts.

Claudia Cappio, 61, was named assistant city administrator in charge of development on Monday by Mayor Libby Schaaf.

Cappio was planning director in Oakland from 2000 to 2007 and worked closely with Jerry Brown, then the city's mayor.

She left Oakland to start a development consulting firm in 2008, but remained close with Brown. He tapped Cappio to be executive director of the California Housing Finance Agency after he became governor in 2011, a position she's held since.

Schaaf also has ties to Brown; she was a staffer in his office from 2004 until 2006.

Cappio will oversee the city's booming economy and is expected to play a big part in the Coliseum City project, possibly Oakland's final attempt to retain one of its professional sports teams.

Mike Blasky covers Oakland City Hall. Contact him at 510-208-6429. Follow him at [Twitter.com/blasky](https://twitter.com/blasky).



U.S. Department
of Transportation
**Federal Highway
Administration**

California Division

March 20, 2013

650 Capitol Mall, Suite 4-100
Sacramento, CA 95814
(916) 498-5001
(916) 498-5008 (fax)

In Reply Refer To:
HDA-CA

Mr. Brian Beveridge
Ms. Margaret Gordon
Co-Directors
West Oakland Environmental Indicators Project
1747 14th Street
Oakland, CA 94607

SUBJECT: Oakland Army Base Infrastructure Master Plan, TIGER II Grant No. P-21

Dear Mr. Beveridge & Ms. Gordon:

Thank you for your letter dated January 29, 2013 regarding the Oakland Army Base Infrastructure Master Plan – Transportation Investment Generating Economic Recovery (TIGER) II Grant No. P-21. The Federal Highway Administration (FHWA) has reviewed the letter and discussed your concerns with the City of Oakland.

FHWA's oversight role for this TIGER planning grant is primarily to fund the Oakland Army Base Infrastructure Master Plan under the Cooperative Agreement between the FHWA and the City of Oakland, which was executed on March 9, 2011. The work involves only planning-level activities. These planning activity products may be used to inform future NEPA reviews, consistent with applicable Federal law and policies, if Federal funding or approvals are required for implementation. It should be noted that Environmental Impact Reports under the California Environmental Quality Act (CEQA) are a State of California responsibility.

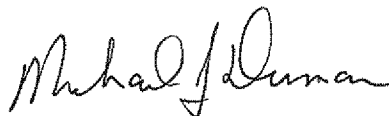
Based on the information provided from the City of Oakland (see enclosed letter from the City of Oakland dated February 25, 2013), it appears that the TIGER funds are being spent in accordance with all applicable Federal regulations and statutes. The City of Oakland has provided numerous opportunities for public comment on the planning grant. Since the master plan is not yet complete, FHWA believes there will be additional opportunities for the public to provide input on the master plan. Therefore, we encourage the West Oakland Environmental Indicators Project to continue to engage the City of Oakland in the ongoing project development, as this will lead to improved alternatives and ultimately a more informed master plan.

In response to the requested time extension status update, FHWA received an eight-month time extension request from the City of Oakland on March 1, 2013 which will allow additional time for conducting sufficient public meetings with West Oakland community stakeholders. The California Division Office has forwarded the request to the Office of the

Secretary of Transportation for concurrence. We anticipate responding to the City by April 1, 2013.

If you have any other questions or need further information, please contact Stew Sonnenberg (Stew.Sonnenberg@dot.gov) of the FHWA at (916) 498-5889.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael J. Duman".

For: Vincent P. Mammano
Division Administrator

Enclosure

CITY OF OAKLAND



CITY HALL • 1 FRANK H. OGAWA PLAZA • OAKLAND, CALIFORNIA 94612

Office of the City Administrator

VIA EMAIL AND U.S. MAIL

(510) 238-3301
FAX (510) 238-2223
TDD (510) 238-2007

February 25, 2013

Mr. Stew Sonnenberg
Federal Highway Administration
California Division
650 Capitol Mall, Suite 4-100
Sacramento, CA 95814

Re: Letter from the West Oakland Environmental Indicators Project Dated January 29, 2013

Dear Mr. Sonnenberg:

The City of Oakland (City) submits this letter in response to the letter dated January 29, 2013 from the West Oakland Environmental Indicators Project (WOEIP) alleging mismanagement of Tiger II Grant funds. We appreciate this opportunity to correct both the numerous misstatements made by WOEIP and any misperceptions that the letter may have created. This letter addresses the key issues in the order in which we discussed them in our February 8 conference call; namely, the adequacy of the environmental review performed for the City's Oakland Army Base Redevelopment project ("Project"), the opportunity for public participation in that master planning and environmental review process and the schedule and process for the West Oakland Specific Plan (WOSP).

As an initial matter, it is important to appreciate the numerous approvals and agreements that govern the public and community benefits, including environmental benefits, to be provided by the Project and the extended negotiations with all stakeholders that led to their adoption. Among other planning documents, the Project is subject to a Master Plan (Base Reuse Plan), a Lease Disposition and Development Agreement (which includes a Community Benefits Package) and a Cooperation Agreement, which exceed the requirements of applicable laws and, collectively, provide an unprecedented benefit package to the Oakland community. This package was negotiated among multiple stakeholders (with ten community stakeholder signatories) and, in the absence of unlimited funds, necessarily balances the interest of those stakeholders. The participation, cooperation and agreement of these many stakeholders in the overall mitigation and benefits package are evidenced by their respective signatures on the Cooperation Agreement executed concurrently with the approval of the other documents. Those signatures, quite notably, include the authors of the WOEIP letter on behalf of the WOEIP.

Through its January 29th letter, WOEIP is independently seeking to renegotiate the air quality mitigation and benefit elements of the Project contained in the City approvals and the existing community benefit agreements to which WOEIP is a party. WOEIP's letter appears to threaten all of those benefits,

including the local jobs, job training, economic and environmental benefits that the Project will bring to the community, all without the involvement of the many stakeholders who for years have worked in good faith with the City and each other to achieve the current balance among the respective stakeholder goals. WOEIP's arguments should be rejected for this reason alone. Each of WOEIP's allegations also demonstrably lacks substantive merit, as shown below.

THE PROJECT HAS FULLY COMPLIED WITH ALL CEQA REQUIREMENTS

WOEIP raises three primary issues regarding the adequacy of the City's environmental review under the California Environmental Quality Act (CEQA): (1) the City failed to do a "full environmental review" by preparing an addendum rather than a subsequent EIR;¹ (2) the mitigation plan adopted by the City is based on obsolete mitigation technologies; and (3) the City/Developer has failed to adequately engage with public agencies and other interested community members regarding air quality issues as required by the LDDA. As demonstrated below, each of these allegations is simply wrong.

The City Completed a Full Environmental Review under CEQA.

The City has at all stages of the Project conducted its environmental review in full compliance with the CEQA. For purposes of the TIGER grant, two elements dictate the CEQA requirements for the Project: California law (CEQA itself) and the Grant Agreement. The City has fully complied with both.

In 2002, the City conducted and approved a full Environmental Impact Report (EIR) for the Project pursuant to CEQA.² The EIR covered the larger 710-acre area of the Oakland Army Base Redevelopment Plan area (which includes the current Project). That process included:

- A Draft EIR, released for public review on April 29, 2002. Comments were solicited for a 45-day period, ending on June 12, 2002; the City Planning Commission held a public hearing on the Draft EIR on June 5, 2002;
- A Final EIR, containing responses to comments received on the Draft EIR and revisions to the Draft EIR text, released on July 19, 2002; the Final EIR consists of: the Draft EIR by reference, letters received in response to the DEIR and a summary of oral comments made on the DEIR, responses to oral and written comments, and other revisions and additions to the DEIR;
- In July and September 2002, respectively, the City of Oakland and the Port of Oakland certified/adopted the 2002 EIR and OARB Redevelopment Plan.

¹ All CEQA-related documents, including the IS/Addendum and its appendices, as well as the Standard Conditions of Approval/Mitigation Monitoring and Reporting Program, are available online at:
<http://www2.oaklandnet.com/Government/o/PEN/OurServices/Application/DOWD009157>

² The City and Port also prepared additional CEQA documents that relate to the 2012 Project site including a Supplemental EIR for the 2006 Automall Project (this project was never pursued); a 2006 Addendum analyzing the impacts of not relocating Maritime Street to the east onto OARB property, a realignment that was originally proposed as part of the 2002 Project; and a 2009 Addendum to study a proposal for an Aggregate Recycling and Fill Project for a portion of the former OARB (this project was never pursued).



In 2012, the City evaluated proposed changes in the Project under CEQA. It determined the revisions to the Project created no new significant impacts and no substantial increase in the severity of previously identified significant impacts from those identified in the 2002 EIR. As a result, an addendum was not only the appropriate environmental document for approval of the Project, it was the legally required environmental document.

Section 15164(a) of Chapter 14 of the California Code of Regulations (CEQA Guidelines) provides that in the absence of certain conditions and findings, the lead agency "shall prepare" an addendum:

- (a) The lead agency or responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred.

Pursuant to CEQA and applying the City's standard practices, the City analyzed the proposed revisions to the Project and the 2002 EIR and determined that none of the circumstances identified in CEQA Guidelines Section 15162 that would require preparation of a Supplemental/Subsequent EIR were present.

The City's Initial Study/Addendum (IS/Addendum) analyzes, among other things, the project and cumulative effects of 17 environmental aspects of the 2012 Project against existing physical conditions: Aesthetics; Agriculture and Forest Resources; Air Quality; Biological Resources; Cultural Resources; Geology and Soils; Greenhouse Gas Emissions; Hazards and Hazardous Materials; Hydrology and Water Quality; Land Use and Planning; Mineral Resources; Noise; Population and Housing; Public Services; Recreation; Transportation/ Traffic; Utilities and Service Systems. The IS/Addendum also compares the effects of the 2012 Project with those effects identified in the 2002 EIR. This analysis underlies the City's determination that none of the circumstances identified in CEQA Guidelines Section 15162 exist and that an addendum was the appropriate and legally required document consistent with CEQA Guidelines Section 15164(a).

Furthermore, regarding air quality (a topic specifically highlighted by WOEIP), the IS/Addendum included a robust study and comparison of construction- and operation-related air quality impacts of the 2012 Project and what was studied in the 2002 EIR for the area, including a quantification of construction emissions (which was not done as part of the 2002 EIR because it was not required at the time). The study followed all current methodologies and protocols recommended by the Bay Area Air Quality Management District (BAAQMD). Here, too, the IS/Addendum found that the 2012 Project did not result in any new significant impacts or increase in the severity of any previously identified significant impacts. Indeed, air quality impacts were lower in 2012 IS/Addendum than estimated in the 2002 EIR.³

³ It should be noted that the level of analysis done for this Addendum is equivalent to that which would have been done had a Supplemental/Subsequent EIR been prepared.

Finally, although the City provided opportunities for public comment on the IS/Addendum, we received very few comments concerning the legal adequacy of the document. Likewise, no party filed a legal challenge to the IS/Addendum and the document is thus not only actually valid, but also legally presumed as such. In addition, the statute of limitations for bringing a CEQA lawsuit expired on or about July 20, 2012. Thus, WOEIP's comments regarding the inadequacy of the CEQA process are not only inaccurate but also untimely.

The TIGER Grant Agreement Expressly Provides for the City to Prepare an Addendum

The FHWA TIGER II Grant No. P21 Agreement (March 9, 2011) (TIGER Grant Agreement) states that the City would conduct further review to assess the extent to which significant new information, changes in circumstances or changes in the Project from what was evaluated in the 2002 EIR as compared to what is proposed as part of the 2012 Project may result in new significant environmental impacts or a substantial increase in the severity of significant impacts already identified in the previous CEQA documents approved by the City. The TIGER Grant Agreement expressly states that if none of those circumstances is present, the City would prepare an Addendum to the 2002 EIR:

OAB Environmental Review. Additional CEQA analysis is necessary to update the programmatic Environmental Impact Report (EIR) that was completed in 2002 for the OARB. The analysis will include new traffic and air quality studies to assess impacts associated with the specifics of the development proposed for the Army Base. . . . These new studies will determine if the proposed project would result in new or more severe impacts or require considerable modification of mitigation measures previously identified. If any of these occur, a Supplemental EIR may be required unless the ORA and Master Developer decide to modify the proposed development to eliminate these factors and retain an Addendum as the appropriate CEQA environmental document. . . .

Deliverables for OAB Environmental Review:

. . . . Addendum complete if there are "No New Impacts" or no "Increase in Severity of Existing Impacts" identified for each topic on the City of Oakland's CEQA environmental checklist.

That is precisely what happened here. As such, the City's CEQA process not only fully complied with California law, but also fully complied with the specific terms of the TIGER Grant Agreement.

THE PROJECT MITIGATION MEASURES ARE BOTH CURRENT AND APPROPRIATE

WOEIP incorrectly asserts that the mitigation plan adopted by the City is based almost entirely on outdated mitigation technologies. On the contrary, for each environmental topic in the IS/Addendum, previously imposed mitigation measures from the 2002 EIR were analyzed, updated, clarified, refined, revised or deleted, as appropriate. As part of this update, with respect to air quality, the City has incorporated the latest BAAQMD's recommended mitigation measures/best management practices.

All mitigation measures and standard conditions of approval (SCAs) for the Project are included in the City Council adopted 2012 Project SCA/MMRP (Final and Corrected 10/15/12) In addition, an annotated



version of the 2012 OARB Project SCA/MMRP, provided for informational purposes only, is also in the Initial Study/Addendum (see IS/Addendum Appendix J: Mitigation Monitoring and Reporting Program Roadmap), which shows the differences between the mitigation measures, Standard Conditions of Approval and recommended measures from the 2002 EIR and those from the 2012 OARB Project IS/Addendum and 2012 SCA/MMRP.

**THE CITY AND DEVELOPER CONTINUE TO EXCEED THE CONSULTATION REQUIREMENTS FOR AIR
MONITORING SET FORTH IN THE LDDA**

WOEIP contends that the City/Developer has failed to engage with the public agencies and other interested community members to address CEQA-required Air Quality related issues and other requirements as required by Lease Disposition and Development Agreement (LDDA). To the contrary, the City and the Developer have exceeded, and continue to exceed, the consultation requirements in the LDDA relating to air quality issues.

For Air Quality Monitoring, the LDDA Requires Only "Consultation" with Specific Public Agencies Regarding the Location of Monitoring Equipment

With respect to air quality monitoring, the LDDA requires, in part, the City and the Developer to:

Cooperate in an air quality monitoring program during construction of the Public Improvements and Private Improvements to install and maintain air monitoring equipment in locations determined in consultation with the Port, Bay Area Air Quality Management District (BAAQMD), Alameda County Public Health Department (ACPHD).

Since approval of the LDDA, the City has been working with its technical consultant to design the required monitoring program. With regard to the required consultation, the City has gone above and beyond the LDDA requirements. Though the LDDA requires that the City consult only with the specified public agencies, in November 2012, the City participated in a meeting to discuss the proposed monitoring locations that included not only the listed agencies, but also interested community members, including WOEIP. During that meeting and in subsequent communications, WOEIP has made clear that its desire is not to discuss the location of the requirement monitoring equipment per the LDDA, but instead to discuss additional mitigations measures and community benefits that it would seek to impose on the Project.

In January 2013, the City distributed a Fact Sheet detailing proposed air monitoring protocols, equipment and locations based on input provided at the November meeting. The City also scheduled a meeting with BAAQMD for February 14, 2013 to discuss the proposed Fact Sheet. Although WOEIP is not named as a party with whom the City must consult regarding the air monitoring locations, it requested that BAAQMD cancel and reschedule that meeting.

Notwithstanding WOEIP's approach regarding the air monitoring issue to date, the City has agreed to arrange a wrap-up meeting with the public agencies identified in the LDDA and will agree to include

WOEIP to discuss technical aspects of the air quality monitoring program proposed in the Fact Sheet. The City will then proceed to implement the air quality monitoring program, so as not to delay the project.

The City has also voluntarily agreed to provide an opportunity for public review and comment on the air quality mitigation measures and Standard Conditions of Approval that require preparation of one or more plans relating to air quality during construction of the City's horizontal/infrastructure components of the project. However, having been through a lengthy planning and approval process that required balancing the interests of a multitude of community groups and interests in addition to those voiced by WOEIP, the City will not renegotiate or add to the City Council-approved mitigation requirements, conditions of approval or existing agreements relating to air quality.

Significant Background Relating to Public Participation for the Project

As indicated above, the Project is subject to numerous approvals and agreements that govern the Project itself as well as its public and community benefits, including environmental benefits. These include a Master Plan (Base Reuse Plan), the Lease Disposition and Development Agreement, including a Community Benefits Package, and a Cooperation Agreement. Accordingly, to appreciate the interaction between the City, the public and related public agencies in connection with the Project, it is important to understand such interactions in connection with each of those documents and their respective negotiation and approval processes.

Throughout the master planning process for the Army Base (which occurred in tandem with CEQA), the City held dozens of public meetings to keep the community informed of the process. Between November 4, 2010 and January 12, 2012, the City convened 15 Town Hall meetings specifically to develop a policy framework for negotiating an agreement regarding community benefits with the Army Base Developer. These community-driven meetings included discussion regarding environmental enhancements to the project but, at the community's behest – and that of WOEIP – focused primarily on local hiring, local business development and jobs. The WOEIP actively participated in these meetings and, in fact, just recently signed the resulting Cooperation Agreement between the City and the participating community and labor groups. The Cooperation Agreement secures the City's commitment to ensure local access to jobs resulting from Army Base development. In return, the community parties, including WOEIP, pledged support for the project analyzed in the IS/Addendum and approved by City Council in June 2012.

Moreover, between July 13, 2010 and June 19, 2012 there were six Council Committee or full City Council meetings in which City staff reported on actions taken in relation to an agreement regarding community benefits and the overall project. These were public meetings at which staff received comments from the community as well as Council members.

Specifically, at an April 24, 2012 Council Committee meeting, staff recommended, and the City Council subsequently approved, applying the City's Standard Conditions of Approval, CEQA mitigation measures,

and/or other measures that can be passed on as performance requirements of Army Base developers. In connection with this meeting, the Alameda County Public Health Department (ACPHD), in collaboration with WOEIP, urged the City Council to impose on the Project a highly prescriptive air quality program, the premise of which was that the development of the Army Base should exceed existing and future air quality and environmental health standards and that the monitoring and enforcement of those unique standards should be overseen by a Stakeholders Committee formed from the Community, the City, and the many regulatory agencies involved in the implementation and enforcement of environmental laws and regulations. For technical, regulatory and fiscal reasons, staff recommended (and City Council ultimately agreed) not to adopt the County/WOEIP proposal. Instead, the City Council endorsed (and later formally adopted and imposed on the Developer as part of the LDDA) an air quality monitoring program for the West Oakland community, including for the purpose of measuring any alleged project impacts. Notwithstanding the City Council's rejection of the County/WOEIP proposal, WOEIP later signed on to the Project Cooperation Agreement, indicating its acceptance and participation in the approved community benefits package and of the Project itself, including the air quality monitoring program and standard conditions of approval and mitigation measures.

In addition to the Town Hall, Committee and City Council meetings, the City has met with the West Oakland Community Advisory Group (WOCAG) on a monthly basis since its inception in 1996. WOCAG is an advisory group that was established as a forum for community members to give input into developing the base reuse plan, to keep community members informed, to participate in developing advisory recommendations to the City, and to provide the public an opportunity to regularly review progress of the planning process. WOCAG has been involved in many issues of community impacts from the base closing including: land use, the environment and infrastructure; housing and homelessness; public benefit and social services; community and economic development; and employment and job development. Brian Beveridge, as well as being co-director of WOEIP, is a member of WOCAG and has attended most of the meetings dating from 2006, the period for which the City has electronic records.

The public, including WOEIP, has had numerous opportunities over many years to participate in and shape both the nature of and the requirements that govern the Project. As demonstrated above, the City and the Developer continue to meet and exceed those requirements as they apply to agency consultation and air quality monitoring.

THE CITY HAS AND CONTINUES TO COORDINATE INFORMATION AND EXPERIENCE IN SHAPING THE PROJECT AND THE WEST OAKLAND SPECIFIC PLAN

WOEIP'S January 29, 2013 letter also includes certain statements regarding the West Oakland Specific Plan ("WOSP") project. WOEIP states that there is no evidence of coordination between the WOSP and the above-referenced Army Base project either in the process or its products or any "clear cross-jurisdictional collaboration." In reality, there has been coordination regarding these projects, as evidenced, in part, by the following:

- WOSP Team History of Army Base Project Involvement and Institutional Knowledge

Of the eleven principal WOSP Project Team members, six have long-standing prior involvement in the Oakland Army Base project. The current Project Manager for the WOSP worked on the Army Base project for approximately 10 years from 1997 to 2007, serving as Army Base Project Manager for many of those years. The WOSP Environmental Impact Report consultant worked on early CEQA environmental documents for the Army Base project between 2000 and 2007. The WOSP infrastructure consultant conducted Army Base infrastructure analyses for a number of years in the early 2000s. The two WOSP economic analysts periodically performed similar Army Base economic analyses for several years during the late 1990s. Lastly, the WOSP traffic consultant conducted Army Base traffic analyses during the late 1990s through this current period. As a result, these WOSP Project Team members help provide the synergy between the two projects through a common information base on planning, environmental, infrastructure, traffic and economic issues.

- Army Base and Port of Oakland Participation in the WOSP Project

In addition to taking advantage of the information, individual knowledge and project histories described above, the WOSP project also built in opportunities for collaboration with Army Base and Port of Oakland. An Army Base department representative serves on the WOSP Technical Advisory Committee, and the chairperson of the Army Base projects' community advisory committee (the previously cited WOCAG organization) serves on WOSP's Steering Committee (Community Advisory Committee). Including these representatives on the WOSP committees was intended to ensure that there was maximum coordination on issues relevant to both projects. The Port of Oakland additionally was invited to participate in the WOSP project by serving on the WOSP's Technical Advisory Committee. Although Port staffing constraints have limited their ability to attend scheduled WOSP Technical Advisory Committee meetings, they have met with WOSP staff in separate meetings to convey their thoughts and have provided written comments, as applicable, on particular WOSP materials. When Port staff have convened community workshops to discuss its Army Base actions, WOSP staff members have attended to glean information and, at Port leadership's request, to report on WOSP activities. It bears noting that, Mr. Beveridge attended and personally observed WOSP staff's participation at the Port's July 7, 2012 Army Base workshop.

- Incorporation of Army Base-Related Recommendations in Draft WOSP Documents

It is critical to understand that the Army Base and WOSP projects are at very different stages. The Army Base project's future development program is already established and was set before the WOSP project began. The WOSP project cannot alter Army Base project actions or its existing approvals and commitments. The future development program for the WOSP project area (West Oakland), however, is more fluid and continues to be refined through the public review process. The City's goal is to ensure that WOSP recommendations build on, support and do not conflict with, the Army Base project. The Draft WOSP documents include several recommendations that reflect these approaches. All of these concepts have been presented in public forums, some of which Mr. Beveridge has attended. As WOSP project team members summarized most recently at the November 14, 2012 Oakland City Planning Commission Scoping Session for the forthcoming WOSP EIR, the WOSP recommendations capitalize on linkages from future development at former Oakland Army Base by:

- Promoting the reuse of selected large sites that are proposed to be vacated as a result of Army Base development actions. These sites currently sustain existing industrial uses that are incompatible with adjacent residential and commercial areas. The WOSP will recommend these uses be replaced with new developments that are more compatible with the surrounding West Oakland neighborhoods.
- Identifying transportation linkages between the West Oakland district, the Army Base, and surrounding locations. The WOSP recommends transportation improvements take advantage of the increased development activity anticipated from both projects.
- Encouraging high job-generation developments options that serve the WOSP area (West Oakland district) and are complementary with the Army Base project.

The WOSP project identifies specific individual recommendations to implement these themes in order to achieve the synergistic goals of the projects.

Purpose of Contract Time Extension for the West Oakland Specific Plan

WOEIP's letter wrongfully alleges that City staff has been unresponsive to WOEIP and the community by requesting an extension of the TIGER grant to serve its own needs in processing the EIR and not for the purpose of providing more time for the WOSP Advisory Committees and the community to become acquainted with the draft WOSP. This allegation is inaccurate. The reason for the extension request was clearly expressed in the City's December 13, 2012 letter to Federal Highway Administration officials:

"This effort is not only important to the City, but to our West Oakland community constituents as well. These parties have taken a gratifying interest in the project and as a result, have expressed interest in lengthening the project schedule in order to ensure that their development concerns and priorities are addressed in the Specific Plan and EIR documents. Although we have convened at least 80 various community forums, including community workshops and meetings with the advisory committees to engage the community members' and stakeholder input, now that the Plan and EIR documents are nearing a level of formality, community stakeholders would like additional time to focus on these products. On their behalf, the City of Oakland is requesting to amend the Cooperative Agreement by extending the current April 30, 2013 project completion date three months, to July 31, 2013."

In short, the extension request was the result of the growing interest on the part of many community representatives and Committee members in needing more time to flesh out the WOSP, at a time when the City was concurrently attempting to address the WOSP community comments already submitted to us. The request was not related to EIR preparation. The City's work and planned work during the extension period, each consistent with its request, is detailed below.

WOSP Extension Request Status

The City has continued to incorporate community representatives' comments received from the various public input forums it convened prior to submitting the December 13, 2012 letter. The City will be amending that request for a three-month extension (from April 2013 to July 2013), to eight months, resulting in a new WOSP project deadline of December 2013. The increase in duration is to accommodate even more community outreach vis-à-vis WOSP's draft recommendations, as well as to reflect the logistical issue that any Specific Plan not completed by end of July must wait until late September when the Oakland City Council (whose approval is required for Plan adoption) returns from Summer recess.

The extended time period will be used to conduct additional community outreach actions such as convening focus groups to solicit comments from community members, agencies, and other subject matter experts on various topics covered in the Specific Plan; distributing a newsletter that describes Plan recommendations and concepts; soliciting interest groups that haven't been involved in the Plan to date to get their comments; initiating electronic surveys that utilize social media approaches for involving members of the public; conducting additional WOSP Steering Committee and Technical Advisory Committee meetings; and conducting large communitywide forums to draw any parties not reached by these additional actions. City staff is also building in longer public review periods for WOSP products to increase public outreach opportunities. These approaches are in addition to the City's standard formal public review actions.

The WOSP project is an important element of the City's West Oakland revitalization efforts and we believe a broad base of community support is necessary for the project to maximize its effectiveness. The City's Specific Plan adoption process mandates that the project be considered by Council Committees prior to being heard by the full Council. We believe these and other related actions can be wrapped up in late 2013 after the City Council sessions resume.

CONCLUSIONS

In sum, with respect to the Army Base, the City has performed an extensive and appropriate environmental review, has afforded the public numerous opportunities to provide input into the development/master plan process, and incorporated much of that City input into a comprehensive and in some matters unprecedented agreement with ten (10) community stakeholders on the Project representing countless community interests. Notwithstanding its current attack on the process, WOEIP is, in fact, a signatory to the recently executed Cooperation Agreement.

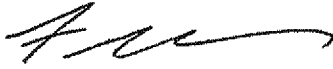
The City has put in place and incorporated coordination and synergies between the WOSP and the Army Base project, and consistent with community sentiment, issued the request for additional time to complete the project. In short, each of the allegations of mismanagement of Tiger II Grant funds by WOEIP are without merit.



Mr. Stew Sonnenberg
February 25, 2013
Page 11

We look forward to successfully implementing the approved Army Base Project as well as completing and implementing the WOSP. Please contact Ms. Hui Wang (510-288-7693) if you have any further questions/concerns or need any supporting documentation.

Sincerely,

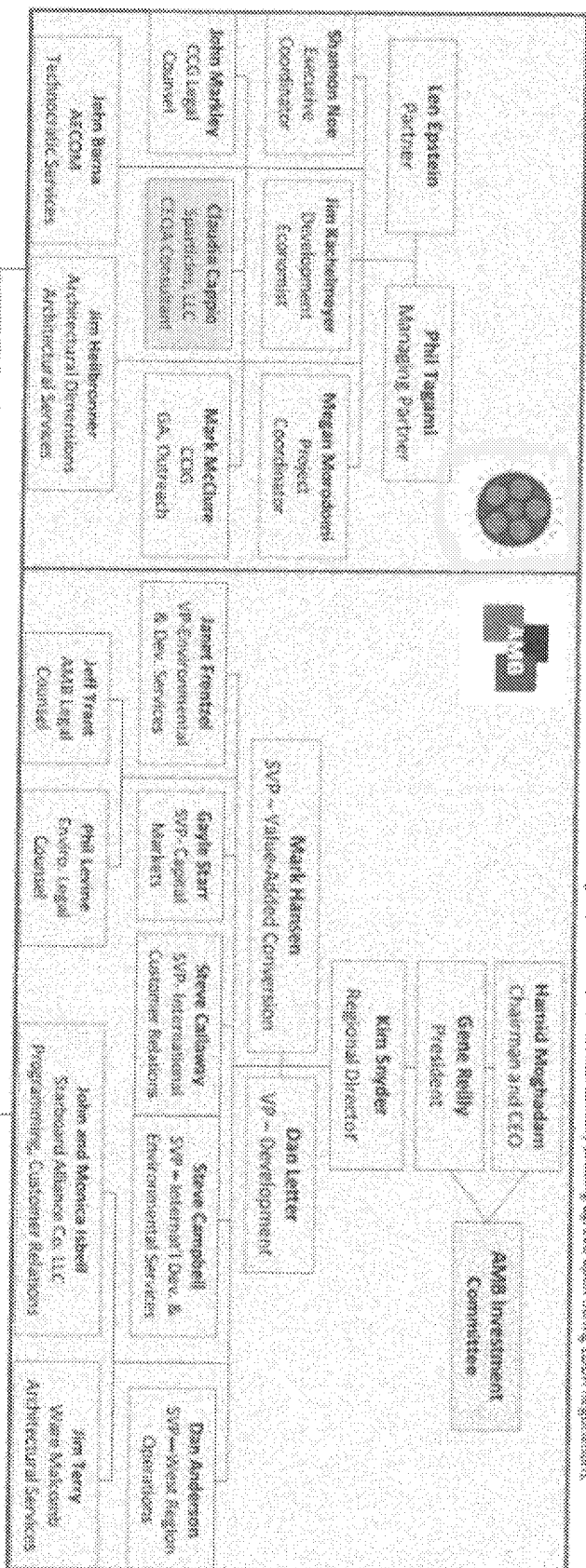
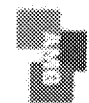


Fred Blackwell
Assistant City Manager

cc: Zuleda Morales, Zuleka.k.morales@hud.gov
Dwayne Marsh, Dwayne.S.Marsh@hud.gov
Jared Blumenfeld, Regional Administrator, EPA Reg. 9, blumenfeld.jared@epa.gov
Richard Grow, Air Division, EPA Reg. 9, grow.richard@epa.gov
Jack Broadbent, jbroadbent@baaqmd.gov
David Vintze, dvintze@baaqmd.gov
Anna Lee, Alameda Co. Dept of Public Health, Anna.Lee@acgov.org
Cynthia Marvin, Ca. Air Resources Board, cmarvin@arb.ca.gov
Congress member Barbara Lee, barbara.lee@mail.house.gov
Scott Miller, Oakland's Interim Planning & Building Director, smiller@oaklandnet.com
Alisa Shen, Planner, City of Oakland, ashen@oaklandnet.com
Hui Wang, _Urban Economic Analyst, City of Oakland, hwang@oaklandnet.com
Doug Cole, OAB Project Manager, City of Oakland, dcole@oaklandnet.com
Elois Thornton, Planner, City of Oakland, eathornton@oaklandnet.com
Ulla-Britt Jonsson, Planner, City of Oakland, ujonsson@oaklandnet.com
Lynette McElhaney, Dist. 3, Oakland City Council, lmcelhaney@oaklandnet.com
Steve Lowe, Vice Pres. West Oakland Commerce Assc., steve@urbanspace.biz
Ray Kidd, West Oakland Neighbors, kidd@att.net
Markus Niebank, WOSP Technical Advisory Committee, markus@amicusenv.com
Robyn Hodges, WOSP Community Advisory Committee, rehher123@gmail.com
Brent Bucknam, WOSP Technical Advisory Committee, brent@hyphae.net
Brian Beveridge, WOEIP, brian.woeip@gmail.com
Margaret Gordon, WOEIP, margaretgordon@sbcglobal.net



OAB Horizontal Program Organizational Chart



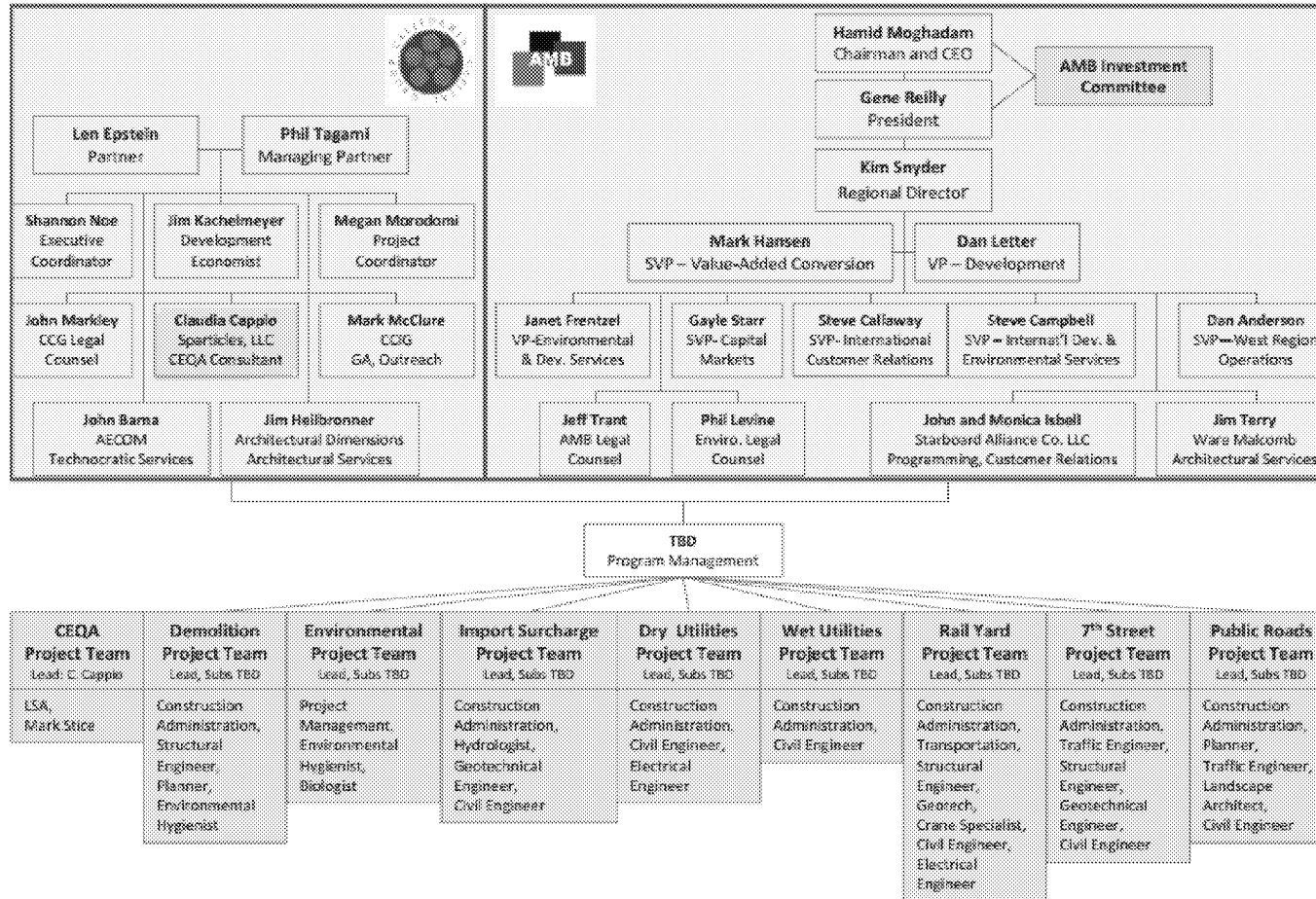
TBD						
Program Management						
CEOA Project Team <i>(Lead: C. Corbin)</i>	Demolition Project Team <i>(Lead: Suba TBO)</i>	Environmental Project Team <i>(Lead: Suba TBD)</i>	Import Surcharge Project Team <i>(Lead: Suba TBD)</i>	Dry Utilities Project Team <i>(Lead: Suba TBD)</i>	Wet Utilities Project Team <i>(Lead: Suba TBD)</i>	Rail Yard Project Team <i>(Lead: Suba TBD)</i>
USA North Shore	Construction, Administration, Structural Engineer, Planner, Environmental Hygienist.	Project Management, Environmental Hygienist, Biologist	Construction Administration, Hydrologist, Geotechnical Engineer, Civil Engineer	Construction Administration, Civil Engineer, Electrical Engineer	Construction Administration, Civil Engineer	Construction Administration, Transportation, Structural Engineer, Geotech. Crane Specialist, Civil Engineer, Electrical Engineer
						J'n Street Project Team <i>(Lead: Suba TBD)</i>
						Construction, Administration, Traffic Engineers, Structural Engineer, Geotechnical Engineer, Civil Engineer
						Public Roads Project Team <i>(Lead: Suba TBD)</i>
						Construction Administration, Planning, Traffic Engineers, Landscape Architect, Civil Engineer

USES - MASTER PLANNING PHASE

ORGANIZATIONAL CHART

OAB Horizontal Program Organizational Chart

Disclaimer: Team structure subject to change based on selected delivery method; local, state, and federal hiring requirements; and vertical delivery phasing agreed upon during LDDA negotiations.



[SHAPE * MERGEFORMAT]

Stew Sonnenberg
FHWA California Division
650 Capitol Mall, Suite 4-100
Sacramento, CA 95814
(916) 498-5889

[HYPERLINK "mailto:Stew.sonnenber@dot.gov" \t "_blank"]

[HYPERLINK

"C:\\Users\\rgrow\\AppData\\Local\\Temp\\notes5524D1\\brian.woeip@gmail.com"]

Brian Beveridge, Co-Dir.
Margaret Gordon, Co-Dir.
WOEIP
1747 14th St.
Oakland, CA. 94607

Jan 29, 2013

Subject: Mismanagement of TIGER II Grant

The West Oakland Environmental Indicators Project (WOEIP) is a community-based, resident-led environmental justice organization located in the western-most section of the city of Oakland, Ca. West Oakland residents experience some of the highest levels of asthma and cancer in the state. We are a "fenceline" community, sharing a freeway as the dividing line between residents and the Port of Oakland; fifth largest port in the U.S. Our study of living conditions in West Oakland, "Knowledge for Change", established 17 indicators of community health and set the tone for planning based change here in 2002. Our studies of port-related truck traffic in 2003 and 2008 established the baseline understanding of freight-related trucking impacts on local residents. In 2005, we established a formal partnership with Region 9 of the U.S. Environmental Protection Agency and, through that partnership, designed a model for collaboration with government and business. Our Collaborative Problem-Solving Model has been used to develop the Port of Oakland's Maritime Air Quality Improvement Plan, and as a tool to reduce conflict between residents, housing developers and the industrial recycling industry. In short, we are experts at collaboration and have deep understanding of regulatory processes and data-based decision making.

Since 2005 we have provided leadership and technical assistance to numerous community groups working to assure a local vision for the redevelopment of the decommissioned Oakland Army Base. We co-chair the West Oakland Community Advisory Group, which was originally commissioned 16 years ago to guide the redevelopment plans for the base. Until the elimination of the Redevelopment Agency, we co-chaired the West Oakland Project Area Committee empowered to advise the City on local goals for urban development in the seven neighborhoods that make up this community. We and our allies serve on the resident advisory and technical advisory committees for the TIGER funded West Oakland Specific Plan.

We are part of an engaged community with great knowledge of our history and the common interests of our neighbors. With this background we are deeply concerned about the mismanagement of the TIGER II Planning Grant awarded to the City of Oakland and the potential civil rights violations attendant to its inadequate public process and lack of a comprehensive planning and mitigation approach.

BACKGROUND

In 2010 the U.S Department of Transportation (DOT) awarded \$2,000,000 to the City of Oakland to develop an "Infrastructure Master Plan and associated Environmental Impact report" (EIR) for the former Oakland Army Base (OAB), as well as, a "West Oakland Specific Plan (WOSP)." We contend that both the OAB EIR, in its inadequate plan to mitigate both construction and operations impacts, and the WOSP are being carried out under bureaucratic cover to the detriment of our community. The actions of the City of Oakland's planning department to hold the public at more than arms length constitute mismanagement of the TIGER II grant through an undermining of its purpose to create linkages between the projects that build a more "sustainable" community and improve our quality of life by improving local transportation infrastructure while mitigating a legacy of industrial impacts.

While the award was based on a commitment to prepare the required "associated Environmental Impact Report" for the OAB logistics center in June of 2012, the City concluded that rather than develop an additional EIR it could "rely on previous CEQA documents", specifically a 2002 EIR covering redevelopment of the OAB, and a "2012 OARB Initial Study/Addendum." The decision by the City to rely on an "Addendum" was significant for many reasons.

First is the basic failure of the City to abide by its commitment to a full environmental review, as stated in the application for DOT funds. Environmental Impact Reports are defined under the California Environmental Quality Act (CEQA) and implemented by way of detailed guidelines. In this case the City chose to simply develop an "Addendum" as defined in the Guidelines at section 15164 rather than performing a new EIR (Section 15161), a "subsequent" EIR (15162) or a "supplement" (15163). The significance of choosing the "addendum" option is that under the Guidelines, unlike any of the other kinds of documents, it "need not be circulated for public review" 15164(b)). Accordingly in this case, the Addendum was not circulated for public review, but instead was posted as part of the docket for City Council action some 2-3 weeks before adoption by the Council in June. This in spite of the fact that significant alterations to the project design have taken place since the original 2002 EIR was certified. Additionally, at least one regional regulatory agency has stated that the project continues to have unmitigated impacts as defined in the original, ten-year-old EIR. The addendum pathway, bypassing the promised assessment and associated public process deprives the public of an opportunity for full discussion and consideration of the impacts, mitigation and monitoring strategies of the project, as well as, denying our community of the legislated regulatory oversight intended to protect us from purely economic interests in the project.

Since the Council action in June, 2012, we have continued to review the documents and consult with the relevant health and regulatory agencies who could best advise on such matters, including Alameda County Public Health, the Bay Area Air Quality Management District, the California Air Resources Board (ARB) and the U.S. Environmental protection Agency. It is relevant that the mitigation plan adopted by the City is based almost entirely on measures reflecting mitigation technologies available in 2002 when the EIR was adopted. Since that time, however, the understanding of regulatory and technological approaches to controlling goods movement related impacts has advanced substantially. It is somewhat incredible that we are having this conflict here

in California where the State and the ARB have been national leaders and our Co-Director sat on the State Goods Movement Task Force under Governor Schwarzenegger. For the sake of expediency, the City is bypassing the due process protections provided under CEQA, putting our community at risk by shielding this project from the knowledge and experience of our federal, state and local regulatory agencies.

In an attempt to engage the City over our concerns and in pursuit of our model of cooperation and collaboration we have requested, since May, 2012, informally via phone and email, and since August, 2012, via formal correspondence, a meeting with the City, along with the agencies mentioned above, to discuss in particular the mitigation and monitoring plans. At this point, more than five months following our most recent request, the City continues to refuse to schedule the discussion. We are told at each turn that they are meeting with their CEQA consultants or developing a "monitoring" plan, which they will present when completed. Both of these intentions are contrary to the public regulatory purpose defined in CEQA. At this point, we can only consider our options, among them a lawsuit under CEQA.

It is our view that the refusal by the City to engage in these discussions and avail itself of the expertise and best practices that would come from such discussions amounts to mismanagement of the project, misuse of the funds and creates an increased risk from this project to the public.

We point out the City's proposal for funding stated, "one overarching goal of the Comprehensive Plan will be to address significant environmental justice concerns which have been raised by the West Oakland community..." It is exactly these "environmental concerns" that we intend to discuss with the City; and they apparently intend to avoid. While the City continues to put off having the requested discussions, and its own outdated mitigation plans are undoubtedly becoming more entrenched in the implied understandings between the City and developers, the community's concerns are not being addressed.

This is not only a matter of mismanagement of the grant, there are also implications under Title VI of the Civil Rights Act, which requires that federal grantees take whatever steps are necessary to avoid discriminatory effects of their projects and programs. The California Air Resources Board (CARB) and Bay Area Air Quality Management District (BAAQMD) have carried out extensive toxic assessments of West Oakland. Both agencies have concluded the community is already subject to disproportionate impacts due to toxic air pollutants, including diesel pollution, emanating in substantial part from port-related mobile sources and freight transport business activities. It is just such activities that are planned for expansion at the OAB "Oakland Global Logistics Center".

Accordingly there is an obligation by the City to make sure that "best available" mitigation techniques are applied to activities at the OAB. In order to do this the City must consult with the community and with those regulatory agencies best qualified to provide advice on the most effective approaches for protecting the community's health. These agencies, CARB, BAAQMD, Alameda County Public Health and the U.S. EPA have stated again and again their desire to advise the City of Oakland and its master

developer on issues of toxic mitigation technologies, present and future regulatory expectations and best practices to reduce the significant health impacts of a project of this scale. A failure to exercise such due diligence amounts to a failure to comply with Title VI of the Civil Rights Act.

Under Title VI, grantees of federal funds must make sure that both the benefits and burdens of their projects and programs are delivered equitably and disproportionate burden does not fall on disadvantaged populations. To the extent that the City is not exercising the required diligence in addressing the effects of this project on the minority community of West Oakland, it is failing to meet this requirement. We urge you to remind the City of its obligations as a recipient of federal funds to abide by these requirements.

IMMEDIATE RELIEF SOUGHT

As primary funder, we seek for your agency to intervene immediately to bring about the discussions we have been requesting for nine months. We expect those discussions to reflect the expertise of our regulatory agencies and to result in modification as needed to create a formal mitigation and monitoring plan applicable to the OAB redevelopment in this decade and reflecting the future of regulatory advancement.

WEST OAKLAND SPECIFIC PLAN

According to the application proposal for the TIGER II grant, it is also intended to support the development and environmental assessment of the West Oakland Specific Plan (WOSP), with a principal goal of identifying synergies between the two development areas. These linking synergies were defined in the grant documents as a means to achieve a more sustainable West Oakland community and reduce a legacy of industrial impacts.

Frankly, we see no evidence of such coordination in the process or its products. Neither these two City projects, nor the federally sponsored projects of the City and of the Port of Oakland on their respectively managed portions of the OAB reflect clear cross-jurisdictional collaboration. The lack of clear linkages between these separate elements of what is purported to be one grant project has been a constant point of contention between the City, its consultants and the community advisory and technical advisory groups set up for this process. This lack of coordination is compromising the community "buy-in" for the WOSP and threatens the effectiveness of all of the plans when it comes to protecting the community from disproportionate impacts and potential development-driven gentrification.

We understand the City has requested an extension of the project schedule to accommodate additional time needed to develop the associated EIR. This is another typically unresponsive action by city staff working on this grant. In fact, the advisory groups requested an extension of the grant period in order to provide more time for their members, and the community at large, to become acquainted with the details for the draft WOSP. Instead, staff has requested more time for their own needs in processing the

Environmental Impact Report. We continue to ask how the residents can comment on the EIR for a plan about which they are not fully informed.

Please inform us of the status of the extension request. As in the OAB logistics center project, the WOSP must consider the environmental justice related effects on the community and the necessity of protecting the residents, both current and future, from undue and avoidable impacts to health and quality of life.

In light of the many concerns raised here, and until these concerns are adequately addressed by the grantee, we request that there be no further federal funding to the City or Port of Oakland from DOT, or its Housing and Urban Development (HUD) and the Environmental Protection Agency (EPA) partners under the federal Partnership for Sustainable Communities. Likewise, we remind all three of these partnering agencies that they have a role in the Title VI liabilities and obligations referred to above.

We look forward to your prompt response.

Sincerely,

Brian Beveridge, Co-Director
Margaret Gordon, Co-Director
West Oakland Environmental Indicators Project

cc:

Samantha Reizes, [[HYPERLINK "mailto:Samantha.reizes@fhwa.dot.gov" \t "_blank" \]
Zuleda Morales, \[\[HYPERLINK "mailto:Zuleka.k.morales@hud.gov" \t "_blank" \\]
Dwayne Marsh, \\[\\[HYPERLINK "mailto:Dwayne.S.Marsh@hud.gov" \t "_blank" \\\]
Jared Blumenfeld, Regional Administrator, EPA Reg. 9, \\\[\\\[HYPERLINK "mailto:blumenfeld.jared@epa.gov" \t "_blank" \\\\]
Richard Grow, Air Division, EPA Reg. 9, \\\\[\\\\[HYPERLINK "C:\\Users\\rgrow\\AppData\\Local\\Temp\\notes5524D1\\grow.richard@epa.gov" \\\\\]
Jack Broadbent, \\\\\[\\\\\[HYPERLINK "mailto:jbroadbent@baaqmd.gov" \t "_blank" \\\\\\]
David Vintze, \\\\\\[\\\\\\[HYPERLINK "C:\\Users\\rgrow\\AppData\\Local\\Temp\\notes5524D1\\dvintze@baaqmd.gov" \\\\\\\]
Anna Lee, Alameda Co. Dept of Public Health, \\\\\\\[\\\\\\\[HYPERLINK "C:\\Users\\rgrow\\AppData\\Local\\Temp\\notes5524D1\\Anna.Lee@acgov.org" \\\\\\\\]
Cynthia Marvin, Ca. Air Resources Board, \\\\\\\\[\\\\\\\\[HYPERLINK "C:\\Users\\rgrow\\AppData\\Local\\Temp\\notes5524D1\\cmarvin@arb.ca.gov" \\\\\\\\\]
Congress member Barbara Lee, \\\\\\\\\[\\\\\\\\\[HYPERLINK "C:\\Users\\rgrow\\AppData\\Local\\Temp\\notes5524D1\\barbara.lee@mail.house.gov" \\\\\\\\\\]
Fred Blackwell, Asst. City Administrator, City of Oakland, \\\\\\\\\\[\\\\\\\\\\[HYPERLINK "C:\\Users\\rgrow\\AppData\\Local\\Temp\\notes5524D1\\fblackwell@oaklandnet.com" \\\\\\\\\\\]
Doug Cole, OAB Project Manager, City of Oakland, \\\\\\\\\\\[\\\\\\\\\\\[HYPERLINK "C:\\Users\\rgrow\\AppData\\Local\\Temp\\notes5524D1\\dcole@oaklandnet.com" \\\\\\\\\\\\]
Elois Thornton, Planner, City of Oakland, \\\\\\\\\\\\[\\\\\\\\\\\\[HYPERLINK "mailto:eathornton@oaklandnet.com" \\\\\\\\\\\\\]\\\\\\\\\\\\]\\\\\\\\\\\\(mailto:eathornton@oaklandnet.com\\\\\\\\\\\\)\\\\\\\\\\\]\\\\\\\\\\\(mailto:dcole@oaklandnet.com\\\\\\\\\\\)\\\\\\\\\\]\\\\\\\\\\(mailto:fblackwell@oaklandnet.com\\\\\\\\\\)\\\\\\\\\]\\\\\\\\\(mailto:barbara.lee@mail.house.gov\\\\\\\\\)\\\\\\\\]\\\\\\\\(mailto:cmarvin@arb.ca.gov\\\\\\\\)\\\\\\\]\\\\\\\(mailto:Anna.Lee@acgov.org\\\\\\\)\\\\\\]\\\\\\(mailto:dvintze@baaqmd.gov\\\\\\)\\\\\]\\\\\(mailto:jbroadbent@baaqmd.gov\\\\\)\\\\]\\\\(mailto:grow.richard@epa.gov\\\\)\\\]\\\(mailto:blumenfeld.jared@epa.gov\\\)\\]\\(mailto:Dwayne.S.Marsh@hud.gov\\)\]\(mailto:Zuleka.k.morales@hud.gov\)](mailto:Samantha.reizes@fhwa.dot.gov)

Ulla-Britt Jonsson, Planner, City of Oakland, [HYPERLINK
"C:\\Users\\rgrow\\AppData\\Local\\Temp\\notes5524D1\\ujonsson@oaklandnet.com"]
Lynette McElhaney, Dist. 3, Oakland City Council, [HYPERLINK
"C:\\Users\\rgrow\\AppData\\Local\\Temp\\notes5524D1\\lmcelhaney@oaklandnet.com"
]
Steve Lowe, Vice Pres. West Oakland Commerce Assc., [HYPERLINK
"C:\\Users\\rgrow\\AppData\\Local\\Temp\\notes5524D1\\steve@urbanspace.biz"]
Ray Kidd, West Oakland Neighbors, [HYPERLINK
"C:\\Users\\rgrow\\AppData\\Local\\Temp\\notes5524D1\\kidd@att.net"]
Markus Niebank, WOSP Technical Advisory Committee, [HYPERLINK
"C:\\Users\\rgrow\\AppData\\Local\\Temp\\notes5524D1\\markus@amicusenv.com"]
Robyn Hodges, WOSP Community Advisory Committee, [HYPERLINK
"C:\\Users\\rgrow\\AppData\\Local\\Temp\\notes5524D1\\rehher123@gmail.com"]
Brent Bucknam, WOSP Technical Advisory Committee, [HYPERLINK
"C:\\Users\\rgrow\\AppData\\Local\\Temp\\notes5524D1\\brent@hyphae.net"]

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 5/16/2017 3:41:21 PM
To: Fitzpatrick, Ryan (OST) [ryan.fitzpatrick@dot.gov]
Subject: OAB - City roles and potential conflicts
Attachments: OAB_Horizontal ORG Chart_C.PNG; TIGER II WOEIP letter to DOT.doc; FHWA 2013 03 20 WOEIP Response.pdf

Ryan

I was recently provided the attached org chart shedding more light on Claudia Cappio's various roles with respect to the OAB over the past 17 years. The relevance, or lack thereof, of this information is unclear to me, but given her role as the current Assistant City Administrator, and as senior staff within the Administration in charge of resolving the OAB issues, I thought it best to keep you informed.

Whatever relevance there is may be tied to the role of the EIR Addendum which, with its documentation of several "significant but unavoidable" impacts, and its bypass of normal CEQA public review processes (not applicable to an addendum), lies at the heart of the unresolved OAB issues. Specifically, there is the issue of whether those "significant" impacts have been adequately determined to be "unavoidable", which would appear to be somewhat analogous to the Title VI requirements regarding the availability of less discriminatory alternatives.

Per the attached org chart, Ms. Cappio was working directly for the OAB developer Phil Tagami in the role of "CEQA Consultant" in the period leading up to (but not including) the City Council's approval of the EIR/Addendum in June of 2012. After leaving Tagami's project she began working again for then Governor Jerry Brown who, in his role as Oakland Mayor (1999-2007) had overseen the City taking over of the OAB when it was transferred from the DoD in the 1999-2001 time frame. As you may recall, by some accounts the foreshortened CEQA process for the EIR/Addendum was driven in part by the demands by the California Transportation Commission (CTC) that the City finalize its long-delayed final reuse plans for the OAB in order to secure \$242M in CTC funding. The CTC itself, while nominally independent, is governed by 11 commissioners, 9 of them appointed by the Governor.

Some but not all of these details were known by the community (and ourselves) when the WOEIP wrote to the FHWA (Stew Sonnenberg, Sacramento regional office) in 2013 objecting to what the WOEIP described as the City's misuse of FHWA's TIGER funds which had been provided to the City (in 2010-2011) to carry out its obligations to fulfill CEQA requirements for the OAB, i.e. to prepare the documents which became the EIR/Addendum. The FHWA Regional office, after consulting with FHWA attorneys at HQ/DC (per conversation with staff at our office) wrote back to the WOEIP that the City had complied with its contract with FHWA. WOEIP letter and FHWA response attached.

Almost as an aside, but further contributing to the community's concerns, the present Mayor, Libby Schaaf, was a City Council member in 2012 when the Council approved the EIR/Addendum. Whether there are any conflicts implied in all of this is far outside my expertise, but it may be relevant to the concern raised by the community that the City should not be entrusted with the responsibility for leading the process to resolve the issue of the adequacy of the OAB mitigation plan, and specifically whether the significant unresolved impacts are in fact "unavoidable."

Below is a newsclip from 2015 on Claudia Cappio's trajectory.

Richard

Mayor hires familiar face to oversee Oakland development

April 6, 2015

A familiar face is returning to Oakland to lead the city's development efforts.

Claudia Cappio, 61, was named assistant city administrator in charge of development on Monday by Mayor Libby Schaaf.

Cappio was planning director in Oakland from 2000 to 2007 and worked closely with Jerry Brown, then the city's mayor.

She left Oakland to start a development consulting firm in 2008, but remained close with Brown. He tapped Cappio to be executive director of the California Housing Finance Agency after he became governor in 2011, a position she's held since.

Schaaf also has ties to Brown; she was a staffer in his office from 2004 until 2006.

Cappio will oversee the city's booming economy and is expected to play a big part in the Coliseum City project, possibly Oakland's final attempt to retain one of its professional sports teams.

Mike Blasky covers Oakland City Hall. Contact him at 510-208-6429. Follow him at [Twitter.com/blasky](https://twitter.com/blasky).



U.S. Department
of Transportation
**Federal Highway
Administration**

California Division

March 20, 2013

650 Capitol Mall, Suite 4-100
Sacramento, CA 95814
(916) 498-5001
(916) 498-5008 (fax)

In Reply Refer To:
HDA-CA

Mr. Brian Beveridge
Ms. Margaret Gordon
Co-Directors
West Oakland Environmental Indicators Project
1747 14th Street
Oakland, CA 94607

SUBJECT: Oakland Army Base Infrastructure Master Plan, TIGER II Grant No. P-21

Dear Mr. Beveridge & Ms. Gordon:

Thank you for your letter dated January 29, 2013 regarding the Oakland Army Base Infrastructure Master Plan – Transportation Investment Generating Economic Recovery (TIGER) II Grant No. P-21. The Federal Highway Administration (FHWA) has reviewed the letter and discussed your concerns with the City of Oakland.

FHWA's oversight role for this TIGER planning grant is primarily to fund the Oakland Army Base Infrastructure Master Plan under the Cooperative Agreement between the FHWA and the City of Oakland, which was executed on March 9, 2011. The work involves only planning-level activities. These planning activity products may be used to inform future NEPA reviews, consistent with applicable Federal law and policies, if Federal funding or approvals are required for implementation. It should be noted that Environmental Impact Reports under the California Environmental Quality Act (CEQA) are a State of California responsibility.

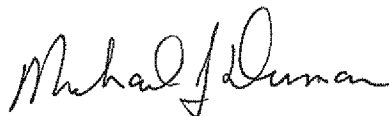
Based on the information provided from the City of Oakland (see enclosed letter from the City of Oakland dated February 25, 2013), it appears that the TIGER funds are being spent in accordance with all applicable Federal regulations and statutes. The City of Oakland has provided numerous opportunities for public comment on the planning grant. Since the master plan is not yet complete, FHWA believes there will be additional opportunities for the public to provide input on the master plan. Therefore, we encourage the West Oakland Environmental Indicators Project to continue to engage the City of Oakland in the ongoing project development, as this will lead to improved alternatives and ultimately a more informed master plan.

In response to the requested time extension status update, FHWA received an eight-month time extension request from the City of Oakland on March 1, 2013 which will allow additional time for conducting sufficient public meetings with West Oakland community stakeholders. The California Division Office has forwarded the request to the Office of the

Secretary of Transportation for concurrence. We anticipate responding to the City by April 1, 2013.

If you have any other questions or need further information, please contact Stew Sonnenberg (Stew.Sonnenberg@dot.gov) of the FHWA at (916) 498-5889.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael J. Duman".

For: Vincent P. Mammano
Division Administrator

Enclosure

CITY OF OAKLAND



CITY HALL • 1 FRANK H. OGAWA PLAZA • OAKLAND, CALIFORNIA 94612

Office of the City Administrator

VIA EMAIL AND U.S. MAIL

(510) 238-3301
FAX (510) 238-2223
TDD (510) 238-2007

February 25, 2013

Mr. Stew Sonnenberg
Federal Highway Administration
California Division
650 Capitol Mall, Suite 4-100
Sacramento, CA 95814

Re: Letter from the West Oakland Environmental Indicators Project Dated January 29, 2013

Dear Mr. Sonnenberg:

The City of Oakland (City) submits this letter in response to the letter dated January 29, 2013 from the West Oakland Environmental Indicators Project (WOEIP) alleging mismanagement of Tiger II Grant funds. We appreciate this opportunity to correct both the numerous misstatements made by WOEIP and any misperceptions that the letter may have created. This letter addresses the key issues in the order in which we discussed them in our February 8 conference call; namely, the adequacy of the environmental review performed for the City's Oakland Army Base Redevelopment project ("Project"), the opportunity for public participation in that master planning and environmental review process and the schedule and process for the West Oakland Specific Plan (WOSP).

As an initial matter, it is important to appreciate the numerous approvals and agreements that govern the public and community benefits, including environmental benefits, to be provided by the Project and the extended negotiations with all stakeholders that led to their adoption. Among other planning documents, the Project is subject to a Master Plan (Base Reuse Plan), a Lease Disposition and Development Agreement (which includes a Community Benefits Package) and a Cooperation Agreement, which exceed the requirements of applicable laws and, collectively, provide an unprecedented benefit package to the Oakland community. This package was negotiated among multiple stakeholders (with ten community stakeholder signatories) and, in the absence of unlimited funds, necessarily balances the interest of those stakeholders. The participation, cooperation and agreement of these many stakeholders in the overall mitigation and benefits package are evidenced by their respective signatures on the Cooperation Agreement executed concurrently with the approval of the other documents. Those signatures, quite notably, include the authors of the WOEIP letter on behalf of the WOEIP.

Through its January 29th letter, WOEIP is independently seeking to renegotiate the air quality mitigation and benefit elements of the Project contained in the City approvals and the existing community benefit agreements to which WOEIP is a party. WOEIP's letter appears to threaten all of those benefits,

including the local jobs, job training, economic and environmental benefits that the Project will bring to the community, all without the involvement of the many stakeholders who for years have worked in good faith with the City and each other to achieve the current balance among the respective stakeholder goals. WOEIP's arguments should be rejected for this reason alone. Each of WOEIP's allegations also demonstrably lacks substantive merit, as shown below.

THE PROJECT HAS FULLY COMPLIED WITH ALL CEQA REQUIREMENTS

WOEIP raises three primary issues regarding the adequacy of the City's environmental review under the California Environmental Quality Act (CEQA): (1) the City failed to do a "full environmental review" by preparing an addendum rather than a subsequent EIR;¹ (2) the mitigation plan adopted by the City is based on obsolete mitigation technologies; and (3) the City/Developer has failed to adequately engage with public agencies and other interested community members regarding air quality issues as required by the LDDA. As demonstrated below, each of these allegations is simply wrong.

The City Completed a Full Environmental Review under CEQA.

The City has at all stages of the Project conducted its environmental review in full compliance with the CEQA. For purposes of the TIGER grant, two elements dictate the CEQA requirements for the Project: California law (CEQA itself) and the Grant Agreement. The City has fully complied with both.

In 2002, the City conducted and approved a full Environmental Impact Report (EIR) for the Project pursuant to CEQA.² The EIR covered the larger 710-acre area of the Oakland Army Base Redevelopment Plan area (which includes the current Project). That process included:

- A Draft EIR, released for public review on April 29, 2002. Comments were solicited for a 45-day period, ending on June 12, 2002; the City Planning Commission held a public hearing on the Draft EIR on June 5, 2002;
- A Final EIR, containing responses to comments received on the Draft EIR and revisions to the Draft EIR text, released on July 19, 2002; the Final EIR consists of: the Draft EIR by reference, letters received in response to the DEIR and a summary of oral comments made on the DEIR, responses to oral and written comments, and other revisions and additions to the DEIR;
- In July and September 2002, respectively, the City of Oakland and the Port of Oakland certified/adopted the 2002 EIR and OARB Redevelopment Plan.

¹ All CEQA-related documents, including the IS/Addendum and its appendices, as well as the Standard Conditions of Approval/Mitigation Monitoring and Reporting Program, are available online at:
<http://www2.oaklandnet.com/Government/o/PEN/OurServices/Application/DOWD009157>

² The City and Port also prepared additional CEQA documents that relate to the 2012 Project site including a Supplemental EIR for the 2006 Automall Project (this project was never pursued); a 2006 Addendum analyzing the impacts of not relocating Maritime Street to the east onto OARB property, a realignment that was originally proposed as part of the 2002 Project; and a 2009 Addendum to study a proposal for an Aggregate Recycling and Fill Project for a portion of the former OARB (this project was never pursued).



In 2012, the City evaluated proposed changes in the Project under CEQA. It determined the revisions to the Project created no new significant impacts and no substantial increase in the severity of previously identified significant impacts from those identified in the 2002 EIR. As a result, an addendum was not only the appropriate environmental document for approval of the Project, it was the legally required environmental document.

Section 15164(a) of Chapter 14 of the California Code of Regulations (CEQA Guidelines) provides that in the absence of certain conditions and findings, the lead agency "shall prepare" an addendum:

- (a) The lead agency or responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred.

Pursuant to CEQA and applying the City's standard practices, the City analyzed the proposed revisions to the Project and the 2002 EIR and determined that none of the circumstances identified in CEQA Guidelines Section 15162 that would require preparation of a Supplemental/Subsequent EIR were present.

The City's Initial Study/Addendum (IS/Addendum) analyzes, among other things, the project and cumulative effects of 17 environmental aspects of the 2012 Project against existing physical conditions: Aesthetics; Agriculture and Forest Resources; Air Quality; Biological Resources; Cultural Resources; Geology and Soils; Greenhouse Gas Emissions; Hazards and Hazardous Materials; Hydrology and Water Quality; Land Use and Planning; Mineral Resources; Noise; Population and Housing; Public Services; Recreation; Transportation/ Traffic; Utilities and Service Systems. The IS/Addendum also compares the effects of the 2012 Project with those effects identified in the 2002 EIR. This analysis underlies the City's determination that none of the circumstances identified in CEQA Guidelines Section 15162 exist and that an addendum was the appropriate and legally required document consistent with CEQA Guidelines Section 15164(a).

Furthermore, regarding air quality (a topic specifically highlighted by WOEIP), the IS/Addendum included a robust study and comparison of construction- and operation-related air quality impacts of the 2012 Project and what was studied in the 2002 EIR for the area, including a quantification of construction emissions (which was not done as part of the 2002 EIR because it was not required at the time). The study followed all current methodologies and protocols recommended by the Bay Area Air Quality Management District (BAAQMD). Here, too, the IS/Addendum found that the 2012 Project did not result in any new significant impacts or increase in the severity of any previously identified significant impacts. Indeed, air quality impacts were lower in 2012 IS/Addendum than estimated in the 2002 EIR.³

³ It should be noted that the level of analysis done for this Addendum is equivalent to that which would have been done had a Supplemental/Subsequent EIR been prepared.

Finally, although the City provided opportunities for public comment on the IS/Addendum, we received very few comments concerning the legal adequacy of the document. Likewise, no party filed a legal challenge to the IS/Addendum and the document is thus not only actually valid, but also legally presumed as such. In addition, the statute of limitations for bringing a CEQA lawsuit expired on or about July 20, 2012. Thus, WOEIP's comments regarding the inadequacy of the CEQA process are not only inaccurate but also untimely.

The TIGER Grant Agreement Expressly Provides for the City to Prepare an Addendum

The FHWA TIGER II Grant No. P21 Agreement (March 9, 2011) (TIGER Grant Agreement) states that the City would conduct further review to assess the extent to which significant new information, changes in circumstances or changes in the Project from what was evaluated in the 2002 EIR as compared to what is proposed as part of the 2012 Project may result in new significant environmental impacts or a substantial increase in the severity of significant impacts already identified in the previous CEQA documents approved by the City. The TIGER Grant Agreement expressly states that if none of those circumstances is present, the City would prepare an Addendum to the 2002 EIR:

OAB Environmental Review. Additional CEQA analysis is necessary to update the programmatic Environmental Impact Report (EIR) that was completed in 2002 for the OARB. The analysis will include new traffic and air quality studies to assess impacts associated with the specifics of the development proposed for the Army Base. . . . These new studies will determine if the proposed project would result in new or more severe impacts or require considerable modification of mitigation measures previously identified. If any of these occur, a Supplemental EIR may be required unless the ORA and Master Developer decide to modify the proposed development to eliminate these factors and retain an Addendum as the appropriate CEQA environmental document. . . .

Deliverables for OAB Environmental Review:

. . . . Addendum complete if there are "No New Impacts" or no "Increase in Severity of Existing Impacts" identified for each topic on the City of Oakland's CEQA environmental checklist.

That is precisely what happened here. As such, the City's CEQA process not only fully complied with California law, but also fully complied with the specific terms of the TIGER Grant Agreement.

THE PROJECT MITIGATION MEASURES ARE BOTH CURRENT AND APPROPRIATE

WOEIP incorrectly asserts that the mitigation plan adopted by the City is based almost entirely on outdated mitigation technologies. On the contrary, for each environmental topic in the IS/Addendum, previously imposed mitigation measures from the 2002 EIR were analyzed, updated, clarified, refined, revised or deleted, as appropriate. As part of this update, with respect to air quality, the City has incorporated the latest BAAQMD's recommended mitigation measures/best management practices.

All mitigation measures and standard conditions of approval (SCAs) for the Project are included in the City Council adopted 2012 Project SCA/MMRP (Final and Corrected 10/15/12) In addition, an annotated



version of the 2012 OARB Project SCA/MMRP, provided for informational purposes only, is also in the Initial Study/Addendum (see IS/Addendum Appendix J: Mitigation Monitoring and Reporting Program Roadmap), which shows the differences between the mitigation measures, Standard Conditions of Approval and recommended measures from the 2002 EIR and those from the 2012 OARB Project IS/Addendum and 2012 SCA/MMRP.

THE CITY AND DEVELOPER CONTINUE TO EXCEED THE CONSULTATION REQUIREMENTS FOR AIR MONITORING SET FORTH IN THE LDDA

WOEIP contends that the City/Developer has failed to engage with the public agencies and other interested community members to address CEQA-required Air Quality related issues and other requirements as required by Lease Disposition and Development Agreement (LDDA). To the contrary, the City and the Developer have exceeded, and continue to exceed, the consultation requirements in the LDDA relating to air quality issues.

For Air Quality Monitoring, the LDDA Requires Only "Consultation" with Specific Public Agencies Regarding the Location of Monitoring Equipment

With respect to air quality monitoring, the LDDA requires, in part, the City and the Developer to:

Cooperate in an air quality monitoring program during construction of the Public Improvements and Private Improvements to install and maintain air monitoring equipment in locations determined in consultation with the Port, Bay Area Air Quality Management District (BAAQMD), Alameda County Public Health Department (ACPHD).

Since approval of the LDDA, the City has been working with its technical consultant to design the required monitoring program. With regard to the required consultation, the City has gone above and beyond the LDDA requirements. Though the LDDA requires that the City consult only with the specified public agencies, in November 2012, the City participated in a meeting to discuss the proposed monitoring locations that included not only the listed agencies, but also interested community members, including WOEIP. During that meeting and in subsequent communications, WOEIP has made clear that its desire is not to discuss the location of the requirement monitoring equipment per the LDDA, but instead to discuss additional mitigations measures and community benefits that it would seek to impose on the Project.

In January 2013, the City distributed a Fact Sheet detailing proposed air monitoring protocols, equipment and locations based on input provided at the November meeting. The City also scheduled a meeting with BAAQMD for February 14, 2013 to discuss the proposed Fact Sheet. Although WOEIP is not named as a party with whom the City must consult regarding the air monitoring locations, it requested that BAAQMD cancel and reschedule that meeting.

Notwithstanding WOEIP's approach regarding the air monitoring issue to date, the City has agreed to arrange a wrap-up meeting with the public agencies identified in the LDDA and will agree to include

WOEIP to discuss technical aspects of the air quality monitoring program proposed in the Fact Sheet. The City will then proceed to implement the air quality monitoring program, so as not to delay the project.

The City has also voluntarily agreed to provide an opportunity for public review and comment on the air quality mitigation measures and Standard Conditions of Approval that require preparation of one or more plans relating to air quality during construction of the City's horizontal/infrastructure components of the project. However, having been through a lengthy planning and approval process that required balancing the interests of a multitude of community groups and interests in addition to those voiced by WOEIP, the City will not renegotiate or add to the City Council-approved mitigation requirements, conditions of approval or existing agreements relating to air quality.

Significant Background Relating to Public Participation for the Project

As indicated above, the Project is subject to numerous approvals and agreements that govern the Project itself as well as its public and community benefits, including environmental benefits. These include a Master Plan (Base Reuse Plan), the Lease Disposition and Development Agreement, including a Community Benefits Package, and a Cooperation Agreement. Accordingly, to appreciate the interaction between the City, the public and related public agencies in connection with the Project, it is important to understand such interactions in connection with each of those documents and their respective negotiation and approval processes.

Throughout the master planning process for the Army Base (which occurred in tandem with CEQA), the City held dozens of public meetings to keep the community informed of the process. Between November 4, 2010 and January 12, 2012, the City convened 15 Town Hall meetings specifically to develop a policy framework for negotiating an agreement regarding community benefits with the Army Base Developer. These community-driven meetings included discussion regarding environmental enhancements to the project but, at the community's behest – and that of WOEIP – focused primarily on local hiring, local business development and jobs. The WOEIP actively participated in these meetings and, in fact, just recently signed the resulting Cooperation Agreement between the City and the participating community and labor groups. The Cooperation Agreement secures the City's commitment to ensure local access to jobs resulting from Army Base development. In return, the community parties, including WOEIP, pledged support for the project analyzed in the IS/Addendum and approved by City Council in June 2012.

Moreover, between July 13, 2010 and June 19, 2012 there were six Council Committee or full City Council meetings in which City staff reported on actions taken in relation to an agreement regarding community benefits and the overall project. These were public meetings at which staff received comments from the community as well as Council members.

Specifically, at an April 24, 2012 Council Committee meeting, staff recommended, and the City Council subsequently approved, applying the City's Standard Conditions of Approval, CEQA mitigation measures,

and/or other measures that can be passed on as performance requirements of Army Base developers. In connection with this meeting, the Alameda County Public Health Department (ACPHD), in collaboration with WOEIP, urged the City Council to impose on the Project a highly prescriptive air quality program, the premise of which was that the development of the Army Base should exceed existing and future air quality and environmental health standards and that the monitoring and enforcement of those unique standards should be overseen by a Stakeholders Committee formed from the Community, the City, and the many regulatory agencies involved in the implementation and enforcement of environmental laws and regulations. For technical, regulatory and fiscal reasons, staff recommended (and City Council ultimately agreed) not to adopt the County/WOEIP proposal. Instead, the City Council endorsed (and later formally adopted and imposed on the Developer as part of the LDDA) an air quality monitoring program for the West Oakland community, including for the purpose of measuring any alleged project impacts. Notwithstanding the City Council's rejection of the County/WOEIP proposal, WOEIP later signed on to the Project Cooperation Agreement, indicating its acceptance and participation in the approved community benefits package and of the Project itself, including the air quality monitoring program and standard conditions of approval and mitigation measures.

In addition to the Town Hall, Committee and City Council meetings, the City has met with the West Oakland Community Advisory Group (WOCAG) on a monthly basis since its inception in 1996. WOCAG is an advisory group that was established as a forum for community members to give input into developing the base reuse plan, to keep community members informed, to participate in developing advisory recommendations to the City, and to provide the public an opportunity to regularly review progress of the planning process. WOCAG has been involved in many issues of community impacts from the base closing including: land use, the environment and infrastructure; housing and homelessness; public benefit and social services; community and economic development; and employment and job development. Brian Beveridge, as well as being co-director of WOEIP, is a member of WOCAG and has attended most of the meetings dating from 2006, the period for which the City has electronic records.

The public, including WOEIP, has had numerous opportunities over many years to participate in and shape both the nature of and the requirements that govern the Project. As demonstrated above, the City and the Developer continue to meet and exceed those requirements as they apply to agency consultation and air quality monitoring.

THE CITY HAS AND CONTINUES TO COORDINATE INFORMATION AND EXPERIENCE IN SHAPING THE PROJECT AND THE WEST OAKLAND SPECIFIC PLAN

WOEIP'S January 29, 2013 letter also includes certain statements regarding the West Oakland Specific Plan ("WOSP") project. WOEIP states that there is no evidence of coordination between the WOSP and the above-referenced Army Base project either in the process or its products or any "clear cross-jurisdictional collaboration." In reality, there has been coordination regarding these projects, as evidenced, in part, by the following:



- WOSP Team History of Army Base Project Involvement and Institutional Knowledge

Of the eleven principal WOSP Project Team members, six have long-standing prior involvement in the Oakland Army Base project. The current Project Manager for the WOSP worked on the Army Base project for approximately 10 years from 1997 to 2007, serving as Army Base Project Manager for many of those years. The WOSP Environmental Impact Report consultant worked on early CEQA environmental documents for the Army Base project between 2000 and 2007. The WOSP infrastructure consultant conducted Army Base infrastructure analyses for a number of years in the early 2000s. The two WOSP economic analysts periodically performed similar Army Base economic analyses for several years during the late 1990s. Lastly, the WOSP traffic consultant conducted Army Base traffic analyses during the late 1990s through this current period. As a result, these WOSP Project Team members help provide the synergy between the two projects through a common information base on planning, environmental, infrastructure, traffic and economic issues.

- Army Base and Port of Oakland Participation in the WOSP Project

In addition to taking advantage of the information, individual knowledge and project histories described above, the WOSP project also built in opportunities for collaboration with Army Base and Port of Oakland. An Army Base department representative serves on the WOSP Technical Advisory Committee, and the chairperson of the Army Base projects' community advisory committee (the previously cited WOCAG organization) serves on WOSP's Steering Committee (Community Advisory Committee). Including these representatives on the WOSP committees was intended to ensure that there was maximum coordination on issues relevant to both projects. The Port of Oakland additionally was invited to participate in the WOSP project by serving on the WOSP's Technical Advisory Committee. Although Port staffing constraints have limited their ability to attend scheduled WOSP Technical Advisory Committee meetings, they have met with WOSP staff in separate meetings to convey their thoughts and have provided written comments, as applicable, on particular WOSP materials. When Port staff have convened community workshops to discuss its Army Base actions, WOSP staff members have attended to glean information and, at Port leadership's request, to report on WOSP activities. It bears noting that, Mr. Beveridge attended and personally observed WOSP staff's participation at the Port's July 7, 2012 Army Base workshop.

- Incorporation of Army Base-Related Recommendations in Draft WOSP Documents

It is critical to understand that the Army Base and WOSP projects are at very different stages. The Army Base project's future development program is already established and was set before the WOSP project began. The WOSP project cannot alter Army Base project actions or its existing approvals and commitments. The future development program for the WOSP project area (West Oakland), however, is more fluid and continues to be refined through the public review process. The City's goal is to ensure that WOSP recommendations build on, support and do not conflict with, the Army Base project. The Draft WOSP documents include several recommendations that reflect these approaches. All of these concepts have been presented in public forums, some of which Mr. Beveridge has attended. As WOSP project team members summarized most recently at the November 14, 2012 Oakland City Planning Commission Scoping Session for the forthcoming WOSP EIR, the WOSP recommendations capitalize on linkages from future development at former Oakland Army Base by:

- Promoting the reuse of selected large sites that are proposed to be vacated as a result of Army Base development actions. These sites currently sustain existing industrial uses that are incompatible with adjacent residential and commercial areas. The WOSP will recommend these uses be replaced with new developments that are more compatible with the surrounding West Oakland neighborhoods.
- Identifying transportation linkages between the West Oakland district, the Army Base, and surrounding locations. The WOSP recommends transportation improvements take advantage of the increased development activity anticipated from both projects.
- Encouraging high job-generation developments options that serve the WOSP area (West Oakland district) and are complementary with the Army Base project.

The WOSP project identifies specific individual recommendations to implement these themes in order to achieve the synergistic goals of the projects.

Purpose of Contract Time Extension for the West Oakland Specific Plan

WOEIP's letter wrongfully alleges that City staff has been unresponsive to WOEIP and the community by requesting an extension of the TIGER grant to serve its own needs in processing the EIR and not for the purpose of providing more time for the WOSP Advisory Committees and the community to become acquainted with the draft WOSP. This allegation is inaccurate. The reason for the extension request was clearly expressed in the City's December 13, 2012 letter to Federal Highway Administration officials:

"This effort is not only important to the City, but to our West Oakland community constituents as well. These parties have taken a gratifying interest in the project and as a result, have expressed interest in lengthening the project schedule in order to ensure that their development concerns and priorities are addressed in the Specific Plan and EIR documents. Although we have convened at least 80 various community forums, including community workshops and meetings with the advisory committees to engage the community members' and stakeholder input, now that the Plan and EIR documents are nearing a level of formality, community stakeholders would like additional time to focus on these products. On their behalf, the City of Oakland is requesting to amend the Cooperative Agreement by extending the current April 30, 2013 project completion date three months, to July 31, 2013."

In short, the extension request was the result of the growing interest on the part of many community representatives and Committee members in needing more time to flesh out the WOSP, at a time when the City was concurrently attempting to address the WOSP community comments already submitted to us. The request was not related to EIR preparation. The City's work and planned work during the extension period, each consistent with its request, is detailed below.

WOSP Extension Request Status

The City has continued to incorporate community representatives' comments received from the various public input forums it convened prior to submitting the December 13, 2012 letter. The City will be amending that request for a three-month extension (from April 2013 to July 2013), to eight months, resulting in a new WOSP project deadline of December 2013. The increase in duration is to accommodate even more community outreach vis-à-vis WOSP's draft recommendations, as well as to reflect the logistical issue that any Specific Plan not completed by end of July must wait until late September when the Oakland City Council (whose approval is required for Plan adoption) returns from Summer recess.

The extended time period will be used to conduct additional community outreach actions such as convening focus groups to solicit comments from community members, agencies, and other subject matter experts on various topics covered in the Specific Plan; distributing a newsletter that describes Plan recommendations and concepts; soliciting interest groups that haven't been involved in the Plan to date to get their comments; initiating electronic surveys that utilize social media approaches for involving members of the public; conducting additional WOSP Steering Committee and Technical Advisory Committee meetings; and conducting large communitywide forums to draw any parties not reached by these additional actions. City staff is also building in longer public review periods for WOSP products to increase public outreach opportunities. These approaches are in addition to the City's standard formal public review actions.

The WOSP project is an important element of the City's West Oakland revitalization efforts and we believe a broad base of community support is necessary for the project to maximize its effectiveness. The City's Specific Plan adoption process mandates that the project be considered by Council Committees prior to being heard by the full Council. We believe these and other related actions can be wrapped up in late 2013 after the City Council sessions resume.

CONCLUSIONS

In sum, with respect to the Army Base, the City has performed an extensive and appropriate environmental review, has afforded the public numerous opportunities to provide input into the development/master plan process, and incorporated much of that City input into a comprehensive and in some matters unprecedented agreement with ten (10) community stakeholders on the Project representing countless community interests. Notwithstanding its current attack on the process, WOEIP is, in fact, a signatory to the recently executed Cooperation Agreement.

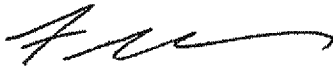
The City has put in place and incorporated coordination and synergies between the WOSP and the Army Base project, and consistent with community sentiment, issued the request for additional time to complete the project. In short, each of the allegations of mismanagement of Tiger II Grant funds by WOEIP are without merit.



Mr. Stew Sonnenberg
February 25, 2013
Page 11

We look forward to successfully implementing the approved Army Base Project as well as completing and implementing the WOSP. Please contact Ms. Hui Wang (510-288-7693) if you have any further questions/concerns or need any supporting documentation.

Sincerely,



Fred Blackwell
Assistant City Manager

cc: Zuleka Morales, Zuleka.k.morales@hud.gov
Dwayne Marsh, Dwayne.S.Marsh@hud.gov
Jared Blumenfeld, Regional Administrator, EPA Reg. 9, blumenfeld.jared@epa.gov
Richard Grow, Air Division, EPA Reg. 9, grow.richard@epa.gov
Jack Broadbent, jbroadbent@baaqmd.gov
David Vintze, dvintze@baaqmd.gov
Anna Lee, Alameda Co. Dept of Public Health, Anna.Lee@acgov.org
Cynthia Marvin, Ca. Air Resources Board, cmarvin@arb.ca.gov
Congress member Barbara Lee, barbara.lee@mail.house.gov
Scott Miller, Oakland's Interim Planning & Building Director, smiller@oaklandnet.com
Alisa Shen, Planner, City of Oakland, ashen@oaklandnet.com
Hui Wang, _Urban Economic Analyst, City of Oakland, hwang@oaklandnet.com
Doug Cole, OAB Project Manager, City of Oakland, dcole@oaklandnet.com
Elois Thornton, Planner, City of Oakland, eathornton@oaklandnet.com
Ulla-Britt Jonsson, Planner, City of Oakland, ujonsson@oaklandnet.com
Lynette McElhaney, Dist. 3, Oakland City Council, lmcelhaney@oaklandnet.com
Steve Lowe, Vice Pres. West Oakland Commerce Assc., steve@urbanspace.biz
Ray Kidd, West Oakland Neighbors, kidd@att.net
Markus Niebank, WOSP Technical Advisory Committee, markus@amicusenv.com
Robyn Hodges, WOSP Community Advisory Committee, rehher123@gmail.com
Brent Bucknam, WOSP Technical Advisory Committee, brent@hyphae.net
Brian Beveridge, WOEIP, brian.woeip@gmail.com
Margaret Gordon, WOEIP, margaretgordon@sbcglobal.net

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 5/15/2017 7:44:06 PM
To: Marvin, Cynthia@ARB [cynthia.marvin@arb.ca.gov]
Subject: Re: Cappio Background

The eye opener for me was her being on all sides of the CEQA document, since it's flaws, or those of the process which relied on it, go to the root of the situation.

From: Marvin, Cynthia@ARB <cynthia.marvin@arb.ca.gov>
Sent: Monday, May 15, 2017 12:34 PM
To: Grow, Richard
Subject: RE: Cappio Background

? I am acutely aware of Claudia's connection to the Governor...

From: Grow, Richard [mailto:Grow.Richard@epa.gov]
Sent: Monday, May 15, 2017 11:57 AM
To: Marvin, Cynthia@ARB
Subject: Fw: Cappio Background

For what it's worth, some background on CC. Attached is an org chart showing her role in OAB CEQA issues as of late 2010. Below is a newsclip from 2015 on her trajectory since then. Libby Schaaf of course was on the Council which approved the EIR Addendum in 2012 and came up with the 17 day process in 2013. RG

A familiar face is returning to Oakland to lead the city's development efforts. Claudia Cappio, 61, was named assistant city administrator in charge of development on Monday by Mayor Libby Schaaf.

Cappio was planning director in Oakland from 2000 to 2007 and worked closely with Jerry Brown, then the city's mayor.

She left Oakland to start a development consulting firm in 2008, but remained close with Brown. He tapped Cappio to be executive director of the California Housing Finance Agency after he became governor in 2011, a position she's held since.

Schaaf also has ties to Brown; she was a staffer in his office from 2004 until 2006.

Cappio will oversee the city's booming economy and is expected to play a big part in the Coliseum City project, possibly Oakland's final attempt to retain one of its professional sports teams.

Mike Blasky covers Oakland City Hall. Contact him at 510-208-6429. Follow him at [Twitter.com/blasky](https://twitter.com/blasky).

Mike Blasky (@blasky) | Twitter

twitter.com

The latest Tweets from Mike Blasky (@blasky): "David Lee's biggest play for the Warriors in years tonight! Great defense on Leonard's ankle"

Mike Blasky covers Oakland City Hall. Contact him at 510-208-6429. Follow him at [Twitter.com/blasky](https://twitter.com/blasky).

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 5/15/2017 6:57:27 PM
To: Marvin, Cynthia@ARB [cynthia.marvin@arb.ca.gov]
Subject: Fw: Cappio Background
Attachments: OAB_Horizontal ORG Chart_C.PNG

For what it's worth, some background on CC. Attached is an org chart showing her role in OAB CEQA issues as of late 2010. Below is a newsclip from 2015 on her trajectory since then. Libby Schaaf of course was on the Council which approved the EIR Addendum in 2012 and came up with the 17 day process in 2013. RG

A familiar face is returning to Oakland to lead the city's development efforts.

Claudia Cappio, 61, was named assistant city administrator in charge of development on Monday by Mayor Libby Schaaf.

Cappio was planning director in Oakland from 2000 to 2007 and worked closely with Jerry Brown, then the city's mayor.

She left Oakland to start a development consulting firm in 2008, but remained close with Brown. He tapped Cappio to be executive director of the California Housing Finance Agency after he became governor in 2011, a position she's held since.

Schaaf also has ties to Brown; she was a staffer in his office from 2004 until 2006.

Cappio will oversee the city's booming economy and is expected to play a big part in the Coliseum City project, possibly Oakland's final attempt to retain one of its professional sports teams.

Mike Blasky covers Oakland City Hall. Contact him at 510-208-6429. Follow him at [Twitter.com/blasky](https://twitter.com/blasky).

Mike Blasky (@blasky) | Twitter

twitter.com

The latest Tweets from Mike Blasky (@blasky): "David Lee's biggest play for the Warriors in years tonight! Great defense on Leonard's ankle"

Mike Blasky covers Oakland City Hall. Contact him at 510-208-6429. Follow him at [Twitter.com/blasky](https://twitter.com/blasky).

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 5/15/2017 6:25:14 PM
To: Marvin, Cynthia@ARB [cynthia.marvin@arb.ca.gov]
Subject: OAB January "Seaport" document: OAB mitigation items - CARB
Attachments: Port of Oakland Seaport ARB Action List draft 1.2017.docx

Cynthia - Here's where I left off in January. Can I take this as, back at that time, representing something close to the best thinking ? Second question - may I share this with Margaret and Brian ? Any groundrules or qualifiers welcome.

Thanks

Richard

From: Yura, Elizabeth@ARB <eyura@arb.ca.gov>
Sent: Thursday, January 19, 2017 11:37 AM
To: Lee, Anna; Grow, Richard; David Vintze
Cc: Marvin, Cynthia@ARB; Alison Kirk; Morris, Robbie@ARB; Boyd, Rich@ARB
Subject: OAB mitigation items - CARB

Hi all,

Per the request of the group, here is the CARB list of mitigation items (draft watermarked this time). Let me know if you have any questions.

Elizabeth Yura
Chief, Emissions Assessment Branch
California Air Resources Board
Direct: (916) 322-8277
Branch Line: (916) 323-4327
Elizabeth.Yura@arb.ca.gov

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 4/5/2017 4:48:21 PM
To: Marvin, Cynthia@ARB [cynthia.marvin@arb.ca.gov]; Elizabeth Yura (elizabeth.yura@arb.ca.gov) [elizabeth.yura@arb.ca.gov]; David Vintze [DVintze@baaqmd.gov]; anna.lee@acgov.org
CC: Brian Beveridge [brian.woeip@gmail.com]; Margaret Gordon [margaret.woeip@gmail.com]
Subject: West Oakland Title VI complaint attached
Attachments: WOEIP Title VI Complaint 4_4_2017.pdf

Have been advised this is a public document.

Richard



By electronic and certified U.S. mail

April 4, 2017

Attn: Ryan Fitzpatrick
Lead Civil Rights Analyst, Department of Transportation
Departmental Office of Civil Rights
1200 New Jersey Ave., S.E.
Washington, D.C. 20590
ryan.fitzpatrick@dot.gov

Attn: Velveta Golightly-Howell
Director, Office of Civil Rights
United States Environmental Protection Agency
U.S. EPA Office of Civil Rights (Mail Code 1201A)
1200 Pennsylvania Ave., NW
Washington, D.C. 20460
Title_VI_Complaints@epa.gov

Attn: Daria Neil
Deputy Chief, Federal Coordination and Compliance Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Daria.neal@usdoj.gov

Re: **Complaint Under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d**

On behalf of the communities of West Oakland, the West Oakland Environmental Indicators Project (WOEIP or “Complainant”) submits this Complaint regarding the City of Oakland’s (“City”) pattern of neglect and systemic disregard for the health and wellbeing of West Oakland’s residents, as demonstrated by its continuous authorizations of expanded freight infrastructure activities at the Port of Oakland and the former Oakland Army Base (“OAB”) while failing to ensure adequate health and safety protections for the surrounding community. Complainant also files this complaint against the Port and the Board of Port Commissioners (collectively referred to as “Port”), for continuously expanding the Port’s maritime, shipping, and transport activities in a manner that similarly exposes West Oakland residents to severe air pollution emissions without adequate mitigation.

The City and Port have engaged in the activities described in this Complaint to manipulate decision making and push through harmful expansions of freight activities for decades. Both parties have refused to engage in a meaningful analysis or process by which to address the negative health and environmental implications of their actions. Time and time

again, both the City and Port have dismissed the consistent input and opposition to their actions from directly impacted West Oakland residents, nearly 80% of whom are people of color, as well as from other agencies concerned about the problems such activities are creating.

The most recent example of the actions that are the subject of this Complaint is the City's approval of the first of a series of development-specific air quality management plans authorizing the construction of a new large-scale global trade and logistics development project located on OAB property. On October 4, 2016, the City Administrator approved a construction management plan for the Northeast Gateway development project site of the OAB, allowing developers, Prologis and the California Capital and Investment Group ("CCIG") to break ground on November 1, 2016, and begin construction for an expansive new warehouse and logistics development project – the "Oakland Global Logistics Center" – the full effects of which neither the City nor the Port have fully analyzed or addressed. This approval, and the City's continued authorization of new development and expanded activities at the Port and OAB create an unjustified disproportionate adverse impact on the basis of race, in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7, and the implementing regulations of the United States Department of Transportation ("DOT"), 49 C.F.R. Part 21, and the United States Environmental Protection Agency ("EPA"), 40 C.F.R. Part 7.

Title VI prohibits entities receiving federal financial assistance from engaging in activities that subject individuals to discrimination on the basis of race, color, or national origin. 42 U.S.C. § 2000d. Both the City and Port receive federal financial assistance from DOT, EPA and other federal agencies.¹ They are, therefore, subject to Title VI's prohibition against discrimination. The City and Port violate that prohibition by forcing through freight expansion projects that disproportionately subject the communities of color that surround both the Port and OAB properties to air pollution and other serious health threats on the basis of their race.

As an initial step in addressing the violations set forth in this complaint, Complainant requests that the DOT Departmental Office of Civil Rights and the EPA Office of Civil Rights accept this Complaint, and investigate whether the City and Port have indeed violated, and/or continue to violate Title VI of the Civil Rights Act and its implementing regulations in issuing their approvals to expand freight-related activities at the Port and OAB.² For reasons of economy, Complainant further requests that these investigations be consolidated and that EPA and DOT collaborate and coordinate the development and implementation of remedial approaches designed to address the City's and Port's violations. Because both the City and Port are most consistently funded by DOT in matters pertaining to the approvals and the activities at issue here, DOT is well poised to take the lead role at the federal level. Complainant also includes the Civil Rights Division of the Department of Justice in this Complaint, in anticipation

¹ While not the subject of this complaint, the Port, which operates as a fully independent department of the City, receives substantial federal assistance in the form of monetary grants and gifts consisting of real property from the Department of Defense, the United States Army, and the United States Department of Homeland Security.

² Complainant also specifically requests that if either DOT or EPA rejects this complaint, the other agency conduct an investigation alone or jointly with other federal agencies, as appropriate, in accordance with federal regulations. See 28 C.F.R. § 42.408(b) ("Where a federal agency lacks jurisdiction over a complaint, the agency shall, wherever possible, refer the complaint to another federal agency . . .").

that they too would play an active role in coordinating these federal investigative and enforcement actions, consistent with the mission of the Federal Coordination & Compliance Section.

In order to remedy the violations set forth in detail below, Complainant requests that DOT and EPA condition all future grants and awards of federal funds to the City and Port on both entities furnishing adequate assurances that their actions with respect to the activities taking place at the Port and OAB properties will address disproportionate impacts on the surrounding community. Specifically, WOEIP requests that the City and Port implement and adhere to appropriately tailored, updated mitigation measures that will address the harmful externalities of the Port's industrial and freight activities – including any and all new and expanded activities occurring at the OAB – and that both the City and Port commit to a meaningful, continuous process for receiving and incorporating input from the West Oakland community.

I. PARTIES

A. Complainant

WOEIP is a neighborhood resident-led, community-based environmental justice organization located in West Oakland, California. The organization is dedicated to achieving healthy homes, healthy jobs, and healthy neighborhoods for all who live, work, learn and play in their community. Through engaging in research projects and participating in agency advisory committees as well as stakeholder groups, WOEIP focuses on leveraging community power to support residents in developing and achieving their own vision for healthy neighborhoods, which includes, among other things, clean soil and vibrant surroundings, clean air and clean water, and a resident-led comprehensive vision for redevelopment and economic revitalization in and around West Oakland.³

B. Recipients

The City is a municipal corporation, ordained and established under the California Constitution. *See* Charter of the City of Oakland art. I. § 100⁴; *see, also*, Cal. Const. art. XI, § 5. As such, the City has the right and the power to make and enforce all laws and regulations relating to its municipal affairs. Charter of the City of Oakland art I. § 106. The City is a recipient of federal funds, as detailed below.

The Port was established in 1927. It operates as a fully independent City department, created by the City pursuant to the City's governing charter. Charter of the City of Oakland art. VII, §700. In creating the Port Department, the City vested “exclusive control and management” of the Port in the Board of Port Commissioners, which is comprised of members nominated by

³ *See* West Oakland Environmental Indicators Project website, *available at* <https://www.woeip.org> (last accessed, March 28, 2017).

⁴ *Available at*: https://www.municode.com/library/ca/oakland/codes/code_of_ordinances?nodeId=THCHOA_ARTVIIPOOA (last accessed on March 28, 2017).

the City's Mayor and appointed by the City Council. *Id.* §701. The Board of Port Commissioners has "complete and exclusive power" over the "Port Area." *Id.* All moneys appropriated by the Board and all revenue from the operation of the Port are under the exclusive control of the Board and are deposited in a special "Port Revenue Fund" in the City's treasury. *Id.* §§ 717(2), (3). Like the City, the Port is a recipient of federal funds, as detailed below.

II. JURISDICTION

The prohibition against racial discrimination set forth in Title VI applies to all recipients of federal funds: "no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d. The acceptance of federal funds in itself creates an obligation on the part of the recipient to comply with Title VI and the federal agencies' implementing regulations.

As explained below, the City and Port are recipients of federal funds and implement programs or activities receiving continuous federal financial assistance. They are, therefore, subject to the requirements of Title VI and its applicable implementing regulations.

A. Program or Activity

Title VI defines a program or activity as "all of the operations of . . . a department, agency, special purpose district, or other instrumentality of a State or of a local government . . . any part of which is extended Federal financial assistance." 42 U.S.C. § 2000d-4a. Accordingly, if any part of a listed entity receives federal funds, the whole entity is covered by Title VI. *Ass'n. of Mex.-Am. Educ. v. California*, 195 F.3d 465, 474-5 (9th Cir. 1999), rev'd in part on other grounds, 231 F.3d 572 (9th Cir. 2000) (en banc).

The actions undertaken by the City and Port are taken as part of a program or activity because the City is its own municipal government entity, and the Port is a department of the City as set forth in the City's charter. Charter of the City of Oakland art. VII, §§ 700, 701. Indeed, the City created the Port's Board of Commissioners specifically to act for and on behalf of the City in any matter within the jurisdiction of the Board, which includes all areas that are part of the Port's operations. Charter of the City of Oakland art. VII, §701. Both the City and Port, including the Board of Port Commissioners, receive federal funds, as explained below.

The City Administrator is also appointed by the City's Mayor, subject to confirmation by the City Council, and is directly accountable to the Mayor's office. *See*, City of Oakland Municipal Code, Title 2, Ch. 2.29, sec. 170 (establishing the Office of the City Administrator). The Administrator is responsible for the day-to-day administrative and fiscal operations of the City, and directs City agencies and departments to ensure the goals and policy directives of the Mayor and City Council are implemented. *See, id.* The responsibilities of the Administrator's Office include: enforcing all laws, ordinances, and policies of the Council; attending all meetings of the Council, Council Committees, boards, and commissions; making recommendations to the Council concerning City affairs; controlling and administering the financial affairs of the City and keeping the Council apprised of these affairs; preparing or directing preparation of the plans,

specifications, and contracts for work the Mayor or Council may order; and coordinating all projects, policies, and directives assigned to the Administrator by the Council or by the Mayor.⁵ Accordingly, the specific actions and approvals undertaken by the City Administrator are also part of a program or activity, as they are taken with the full authority of the City. As outlined below, the infrastructure, shipping, transport, and logistics programs and activities approved by the City, Port, and the City Administrator that are the basis for this Complaint receive federal financial assistance.

B. Federal Financing/Federal Financial Assistance

The City and Port receive federal financial assistance as defined in DOT's and EPA's Title VI implementing regulations.

1. DOT Funds Received by the City and Port

DOT regulations define "[r]ecipient" as "any State . . . or any political subdivision thereof, or instrumentality thereof, any public or private agency, institution, or organization, or other entity, or any individual, in any State . . . to whom Federal financial assistance is extended, directly or through another recipient. . . ." 49 C.F.R. § 21.23.

In Fiscal Year (FY) 2010, the City of Oakland received a considerable Transportation Investment Generating Economic Recovery (TIGER) planning grant in the amount of \$2 million to support the City's estimated \$9,220,000 planning efforts for "sustainable transit oriented planning" at the "[OAB] Redevelopment Area."⁶ According to the grant description, DOT's grant of these funds was aimed at aiding the City's development of "an Infrastructure Master Plan", and associated environmental review, "to direct needed utilities and roadway improvements for the former [OAB]."⁷ The project considered under the terms of this grant also involved a "Specific Plan" and associated environmental review "to guide future development in West Oakland" and to specifically develop a framework for addressing "undervalued and blighted land in the West Oakland community" where the per capita income was, in that year, less than fifty percent of the county average.⁸

DOT has also awarded substantial TIGER funds to the Port. For example, in FY 2012 DOT awarded the Port approximately \$15 million in TIGER grant funds to develop a new Port

⁵ City of Oakland, *City Administration: Welcome*, available at: <http://www2.oaklandnet.com/government/o/CityAdministration/index.htm> (last accessed March 30, 2017).

⁶ See, United States Department of Transportation, *US DOT TIGER II Planning Grants*, available at: <https://www.transportation.gov/sites/dot.gov/files/docs/TIGER%202%20Planning%20GRANTS%20Highlights.pdf> (last accessed March 30, 2017).

⁷ See, United States Department of Transportation, *US DOT TIGER II Planning Grants*, available at: <https://www.transportation.gov/sites/dot.gov/files/docs/TIGER%202%20Planning%20GRANTS%20Highlights.pdf> (last accessed March 30, 2017).

⁸ See, United States Department of Transportation, *US DOT TIGER II Planning Grants*, available at: <https://www.transportation.gov/sites/dot.gov/files/docs/TIGER%202%20Planning%20GRANTS%20Highlights.pdf> (last accessed March 30, 2017).

Rail Terminal serving Port property.⁹ Moreover, DOT consistently funds the Port with large grants specifically intended for airport improvements. While these funds do not directly benefit the OAB properties at issue here, the duration and scale of this funding is important to note. The following is a list of DOT's airport improvement program grants to the Port between FY 2008 and FY 2016:

FY 2008 - \$11,967,919
FY 2009 - \$18,317,487
FY 2010 - \$15,706,402
FY 2011 - \$7,559,904
FY 2012 - \$32,753,747
FY 2013 - \$18,245,770
FY 2014 - \$41,578,114
FY 2015 - \$11,395,060
FY 2016 - \$7,324,847

In FYs 2013 and 2014, the Port was also sub-granted \$983,928 and \$312,263, respectively, in funds originating from DOT, but awarded to the California Department of Transportation (Caltrans) to pay for ongoing operations at the Port.¹⁰

2. EPA Funds Received by the City and Port

Similar to DOT's regulations, EPA's Title VI regulations define a "[r]ecipient" as "any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient" 40 C.F.R. § 7.25.

Between FY 2006 and FY 2010, the City received two consecutive two-year block grants totaling \$800,000 over the course of four years, from EPA, to ensure brownfield cleanup, including clean up in and around the community of West Oakland.¹¹

Starting in 2013, EPA awarded the Port \$282,293 to reduce air pollution from the Port's gantry cranes, through EPA's National Clean Diesel Reduction Program.¹² In FY 2014 EPA also

⁹ See United States Department of Transportation, *TIGER 2012 Awards*, available at: https://www.transportation.gov/sites/dot.gov/files/docs/fy2012tiger_0.pdf (last accessed March 30, 2017).

¹⁰ USASpending.gov, *Recipient Profile: Port of Oakland*, available at: <https://www.usaspending.gov/transparency/Pages/RecipientProfile.aspx?DUNSNumber=009235326&FiscalYear=2013> (last accessed March 30, 2017).

¹¹ See, USASpending.gov, *Recipient Profile: City of Oakland California*, available at: <https://www.usaspending.gov/transparency/Pages/RecipientProfile.aspx?DUNSNumber=137137977&FiscalYear=2010> (last accessed, March 30, 2017), and see USASpending.gov, *Award Summary: City of Oakland*, available at: <https://www.usaspending.gov/transparency/Pages/AwardSummary.aspx?awardId=14192643> (last accessed, March 30, 2017).

¹² See, USASpending.gov, *Award Summary: Board of Port of Commissioners of the Port of [sic]*, available at: <https://www.usaspending.gov/transparency/Pages/AwardSummary.aspx?awardId=12519152> (last accessed, March 30, 2017).

awarded the Port and additional \$415,932 through the same program,¹³ and in FY 2015, EPA granted another \$133,639 to the Port, to support the Port's continued efforts to reduce air pollution from port-related operations.¹⁴

C. Timeliness

This complaint is timely because it is based on the City's and the City Administrator's continuous and ongoing approvals of a series of construction and operation management plans concerning the OAB "Gateway" Redevelopment Project, which is one part of a multi-stage large scale development project called the Oakland Global Logistics Center development, and is likewise part of the Port's continued expansion of its shipping, receiving, storage distribution and freight transport activities. Both DOT and EPA instruct Title VI complainants to file their complaints within 180 days of the alleged discriminatory act.¹⁵ 49 C.F.R. § 21.11(b) (DOT Title VI regulations); 40 C.F.R. § 7.120(b) (EPA Title VI regulations).

On October 4, 2016, the City approved a construction management plan that allowed Prologis and CCIG to break ground on the Northeast Gateway OAB site on November 1, 2016.¹⁶ The operation management plan for the Northeast Gateway project, and the construction and operation management plans for the remaining "Gateway" areas of the OAB remain subject to ongoing similar approvals from the City. The City's October 4, 2016 action is, therefore, one of many piecemealed development-related approvals that will continue to occur.

This complaint is timely because it is filed within 180 days of the City's October 4, 2017 approval and subsequent construction at the Northeast Gateway site. Moreover, because the actions alleged in this Complaint are part of a long history of discriminatory actions that are both ongoing, and slated to continue in subsequent approval processes, Complaint requests that DOT and EPA waive any potential objections related to the 180-day deadline. 49 C.F.R. § 21.11(b); 40 C.F.R. § 7.120(b).

¹³ See, USASpending.gov, recipient profile for the "Port of Oakland" and "Board of Port Commissioners," FY 2014, DUNS no. 009235326, available at: <https://www.usaspending.gov/transparency/Pages/RecipientProfile.aspx?DUNSNumber=009235326&FiscalYear=2014> (last accessed, March 30, 2017).

¹⁴ USASpending.gov, *Recipient Profile: Board of Port Commissioners of the Port of Oa* [sic], available at: <https://www.usaspending.gov/transparency/Pages/RecipientProfile.aspx?DUNSNumber=009235326&FiscalYear=2015> (last accessed, March 30, 2017).

¹⁵ DOT and EPA, moreover, have the authority and the discretion to waive or extend the 180-day deadline. 49 C.F.R. § 21.11(b); 40 C.F.R. § 7.120(b).

¹⁶ See, Annie Sciacca, *Oakland Army Base redevelopment project breaks ground*, East Bay Times, (November 1, 2016), available at: <http://www.eastbaytimes.com/2016/11/01/oakland-army-base-redevelopment-project-breaks-ground/> (last accessed, March 30, 2017).

D. Other Prudential Factors and/or Jurisdictional Considerations

This Complaint satisfies all other jurisdictional and prudential considerations laid out in both DOT's and EPA's regulations implementing Title VI. The Complaint also meets EPA's guidance set forth in its Interim Case Resolution Manual.¹⁷

Specifically, this Complaint is submitted to both agencies in writing, by and on behalf of a Complainant group that is authorized to submit such a complaint to redress the adverse impacts this group experiences directly and which other, similarly situated residents also experience as a result of both the Port's and City's violations of Title VI.

DOT and EPA have subject matter jurisdiction over this Complaint because it alleges discrimination based on race in violation of Title VI of the Civil Rights Act of 1964. This Complaint also contains unique civil rights allegations that have not been alleged in any court or administrative proceeding, and which are specific to the City's and Port's systemic pattern of issuing project approvals and/or engaging in activity at and surrounding the Port and OAB properties in a manner that causes disproportionate effects to the surrounding residential community, on the basis of race.

Moreover, this Complaint seeks unique relief from DOT and EPA — compliance with Title VI. Complainant asks DOT and EPA to investigate this Complaint and take steps to remedy noncompliance with Title VI by the City and Port, including conditioning any and all future federal funding. This relief is not available through other means.

III. FACTUAL BACKGROUND

A. The Residents and Community of West Oakland

1. West Oakland's History and Demographics

West Oakland is a diverse community with a rich history and a historically vibrant culture dating back to the late nineteenth century. In the 1800s and early 1900s, West Oakland was home to many European, Japanese, and Chinese immigrants, Mexicans, and a large number of African Americans who migrated from the South for jobs in the auto and rail industries. As military activities expanded at the OAB, and new job opportunities in the Port's shipyards increased, West Oakland experienced an even greater influx of mostly small-business growth,

¹⁷ See, e.g., United States Environmental Protection Agency, *Case Resolution Manual*, Chapter 2 (January 2017), available at https://www.epa.gov/sites/production/files/2017-01/documents/final_epa_ogc_ecrco_crm_january_11_2017.pdf (last accessed, March 30, 2017).

which, in addition to the OAB's activities included many local shops that were owned by, and served, West Oakland residents.¹⁸

In the late 1900's, however, West Oakland experienced a decline in its relative economic vitality.¹⁹ While it remains a mostly working-class community, the median household income in zip code 94607, which encompasses most of West Oakland today, is \$35,837.²⁰ For comparison, the median income of Alameda County is \$67,169.²¹ Over 30% of individuals living in zip code 94607 live below the poverty level.²² In Alameda County as a whole, only 13.5% of individuals live below the poverty level.²³ As *Figure 1* indicates, poverty has been a long term issue in West Oakland, with the entire community experiencing either persistent (five decades long), or frequent (three to four decades long), high poverty rates.

//

//

//

//

//

//

//

//

//

¹⁸ See, e.g., Oakland Base Reuse Authority, *Gateway to the East Bay: Final Reuse Plan for the Oakland Army Base*, Ch. 1.1 "[OAB] Location, History and Setting", p. 13 (July 31, 2012) (describing some of the historical background of the region, and in particular of the OAB, and its surroundings), available at <http://www2.oaklandnet.com/government/o/CityAdministration/d/NeighborhoodInvestment/o/OaklandArmyBase/DOWD008829> (last accessed April 3, 2017).

¹⁹ County of Alameda, CA, *Demographics*, available at <https://www.acgov.org/about/demographics.htm> (last accessed March 30, 2017); United States Census Bureau, *American FactFinder*, citing 2011-2015 American Community Survey 5-Year Estimates, available at <https://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml> (last accessed March 30, 2017).

²⁰ United States Census Bureau. *American FactFinder*, citing 2011-2015 American Community Survey 5-Year Estimates, available at <https://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml> (last accessed March 30, 2017).

²¹ County of Alameda, CA, *Demographics*, available at <https://www.acgov.org/about/demographics.htm> (last accessed March 30, 2017).

²² United States Census Bureau. *American FactFinder*, citing 2011-2015 American Community Survey 5-Year Estimates, available at <https://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml> (last accessed March 30, 2017).

²³ County of Alameda, CA, *Demographics*, available at <https://www.acgov.org/about/demographics.htm> (last accessed March 30, 2017).

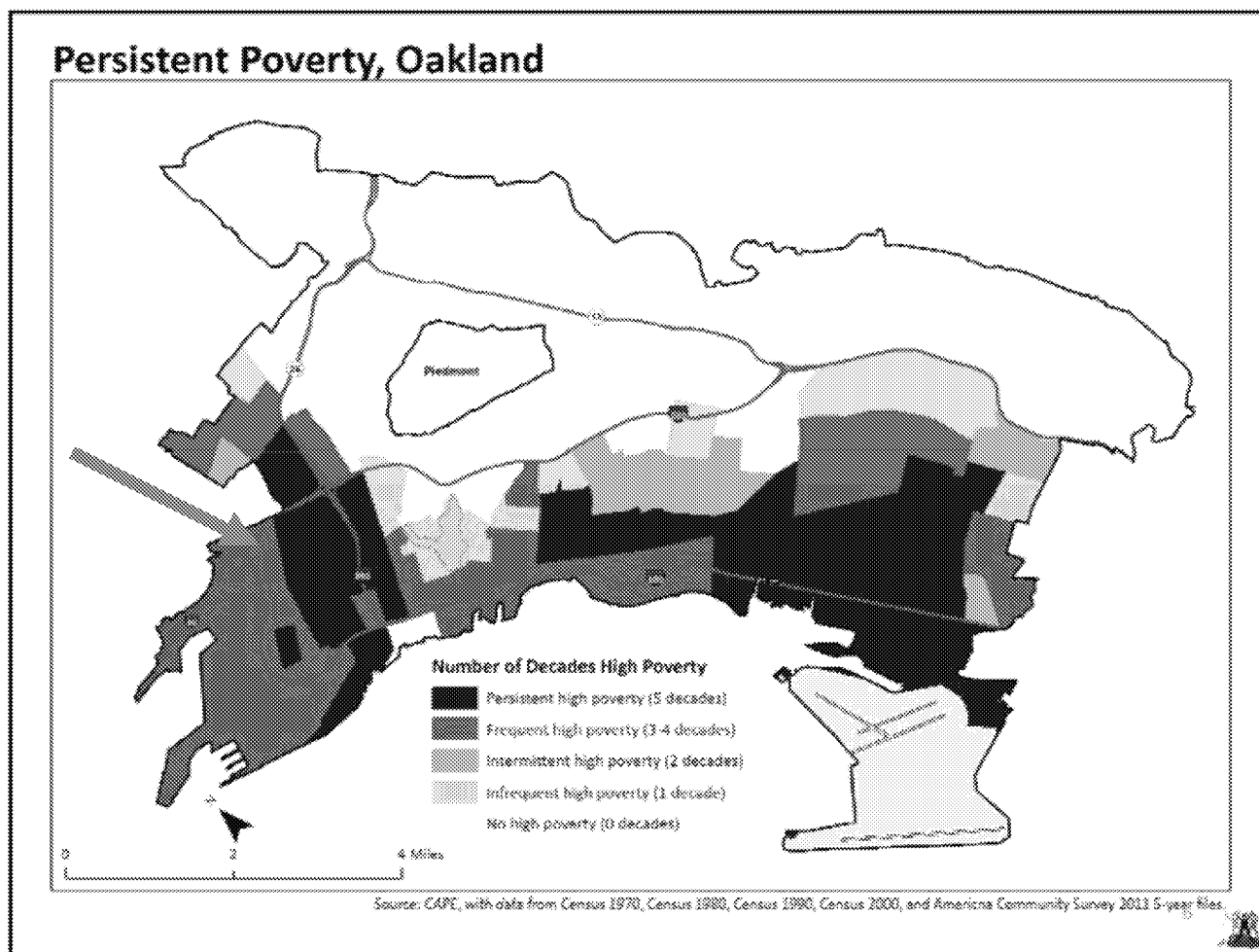


Figure 1 Map of areas of persistent poverty in Oakland (with arrow pointing to West Oakland).²⁴

Most importantly for the purpose of this Complaint, and the allegations set forth herein, West Oakland remains primarily a community of color. Approximately 49 percent of West Oakland residents today are Black, 17 percent identify as Latino, 15 percent identify as White, and nearly 13 percent identify as Asian.²⁵ In Alameda County overall, 51 percent of Alameda County residents are White, only 12 percent are Black, 30 percent are Asian, and 23 percent are Latino.²⁶

²⁴ Alameda County Public Health Department, *East and West Oakland Health Data Existing Cumulative Health Impacts*, West Oakland Resident Action Council (RAC) Meeting (September 5, 2015), p. 6.

²⁵ Alameda County Public Health Department, *East and West Oakland Health Data Existing Cumulative Health Impacts*, West Oakland Resident Action Council (RAC) Meeting (September 5, 2015), p. 3.

²⁶ United States Census Bureau, *Quick Facts: Alameda County, California* (2015), available at <https://www.census.gov/quickfacts/table/PST045216/06001> (last accessed March 30, 2017).

2. Health and Pollution Burdens Affecting West Oakland

The largely residential community of West Oakland is surrounded by the Port and OAB, and by freeways. Specifically, as shown in *Figure 2*, three interstate freeways, the I-580, I-880 and I-980 freeways, surround West Oakland with the Port and OAB surrounding the community to the West and South.

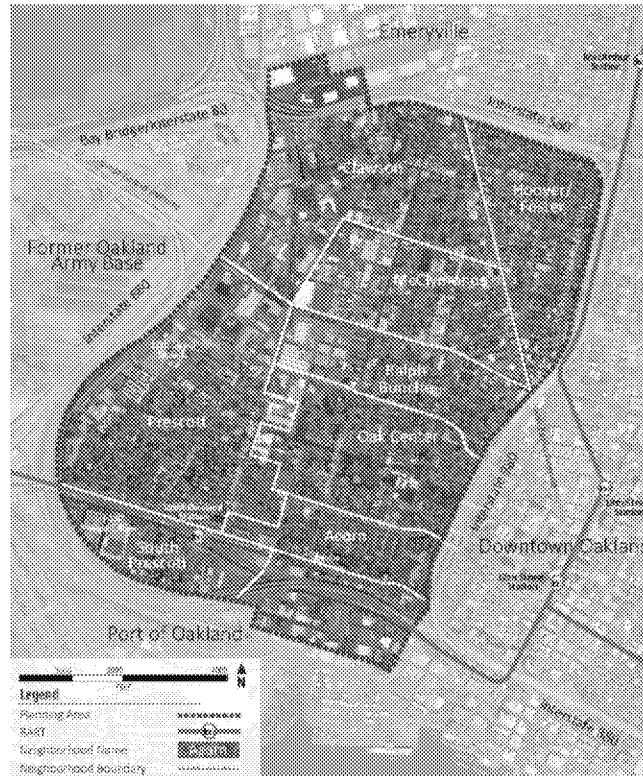


Figure 2 Map of the community of West Oakland.²⁷

In addition to housing the Port, which is the fifth busiest container port in the United States, West Oakland is also home to two rail yards, with expansive and growing rail road tracks that are owned and operated by Union Pacific (“UP”), and the Burlington Northern and Santa Fe Railroad Company (“BNSF”). While not pictured above, West Oakland also has numerous trucking-based distribution centers and a host of related businesses including mechanical and body repair shops as well as large diesel gas stations that serve various activities taking place at the Port and OAB.

Thus, while this community has many aspects of unique physical beauty, including many nineteenth century Victorian-era historical buildings, an important and meaningful history, as

²⁷ City of Oakland, *West Oakland Specific Plan* (area map), available at <http://www2.oaklandnet.com/Government/o/PBN/OurOrganization/PlanningZoning/OAK028334> (last accessed, April 3, 2017).

well as vibrant cultural traditions, today, its residents experience an overwhelming and disproportionate burden of health and environmental risks caused by the activities surrounding their homes and schools. For example, the Oakland Unified School District (OUSD) has identified the three elementary schools, two middle schools, and three high schools located in West Oakland and serving the West Oakland community as showing the highest “environmental stress indicators” based on students’ exposure to poor air quality and inadequate access to healthy foods, among other environmental risks.

Environmental Stress Factors

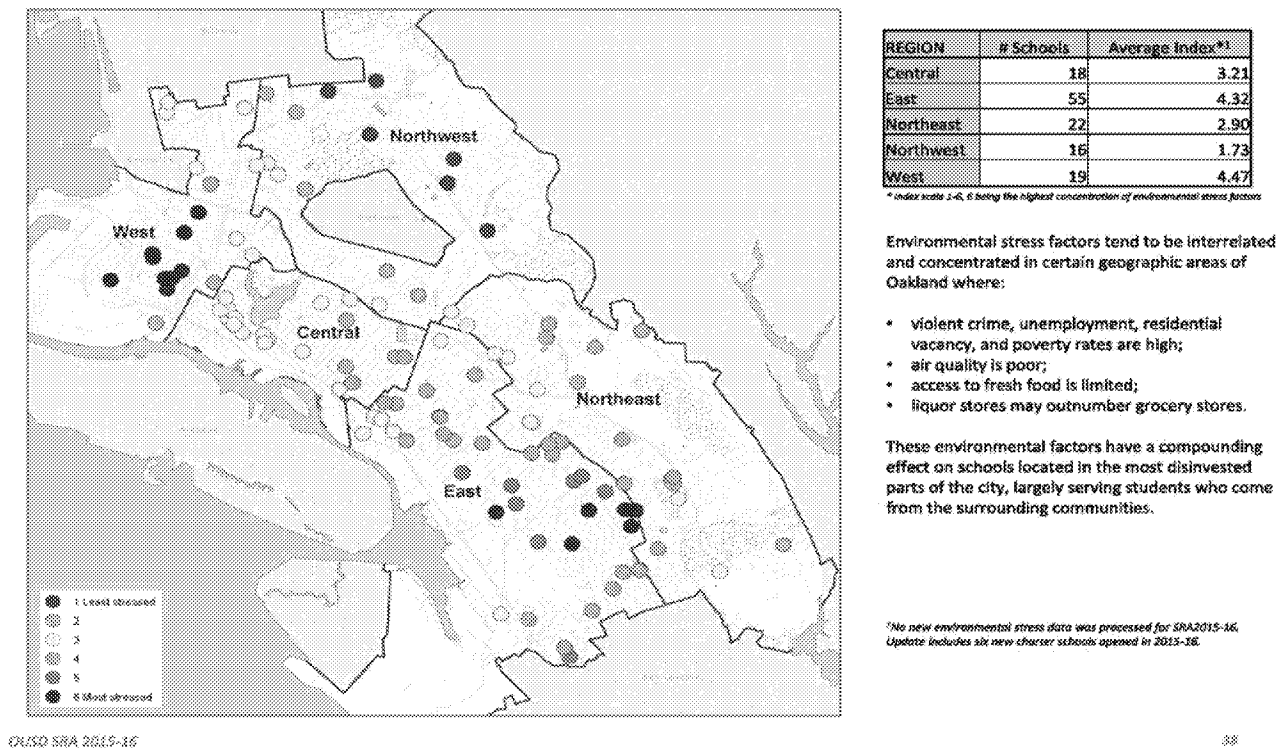


Figure 3 Environmental stress factors by school.

In addition, there are two preschools and at least one formal, reported day-care center, which, while not included in the OUSD map above, are located in close proximity to the Port and the

freeways surrounding West Oakland.²⁸ These childcare facilities are exposed to the same stress indicators, including poor air quality, as the OUSD-reported schools shown in *Figure 3*, yet with potentially even more devastating impacts, considering the age and size of the children attending these care facilities.

Notably, most of the pollution burden West Oakland residents shoulder directly results from the activities taking place at and around the Port and OAB. Trucks serving the Port bring heavy air pollutant emissions, including emissions of diesel particulate matter; the traffic they cause disrupts neighborhoods, and damages local streets that were not intended for heavy trucks.

Air pollution has been proven to cause and/or exacerbate respiratory and cardiovascular illness, and can trigger asthma attacks.²⁹ Diesel particulate matter emitted by heavy duty trucks and other freight vehicles and equipment like ships and trains, is a known carcinogen. The California Air Resources Board (“ARB”) has found that West Oakland residents are “exposed to diesel particulate matter ambient concentrations that are almost three times the average background diesel particulate matter ambient concentrations in the [Bay Area Air Quality Management District].”³⁰ Indeed, West Oakland residents experience a lifetime potential cancer risk of 1,200 excess cancers per million due to diesel particulate matter emissions. In comparison, the ARB found an excess cancer risk due to diesel particulate matter of 480 excess cancers per million across the entire San Francisco Bay Area.³¹ The risk that West Oakland residents face is nearly three times the risk that Bay Area residents generally face. Diesel particulate matter emissions from the Port alone are responsible for a risk of approximately 200 excess cancers per million.³²

In 2008, the ARB conducted a diesel particulate matter Health Risk Assessment in West Oakland. The 2005 baseline emission inventory used in the assessment showed that heavy duty trucks accounted for 112 tons per year of diesel particulate matter emissions, or 13% of the total

²⁸ Harriett Tubman Preschool is located on 3rd street, in the Hoover/Foster neighborhood of West Oakland, adjacent to the I-580 and I-980 intersections, which experience heavy traffic to reach the Port and Port facilities. See, map location, available at: <https://www.google.com/maps/place/Harriet+R+Tubman+CDC/@37.8236086,-122.2731381,15z/data=!4m5!3m4!1s0x0:0x1b8f115e05028cb2!8m2!3d37.8236086!4d-122.2731381> (last accessed, March 30, 2017). The Baby Academy and Infant Day Care Center is also located in West Oakland’s Prescott neighborhood, which is adjacent to the I-880 or “Nimitz Freeway” that feeds directly onto frontage roads serving the Port. See, map location, available at: <https://www.google.com/maps/place/The+Baby+Academy+Infant+Care+%26+Preschool/@37.8094548,-122.2975516,15z/data=!4m5!3m4!1s0x0:0x891cc2ecd329e327!8m2!3d37.8094548!4d-122.2975516> (last accessed, March 30, 2017).

²⁹ Saffet Tanrikulu, Cuong Tran, and Scott Beaver, Bay Area Air Quality Management District, *Health Impact Analysis of Fine Particulate Matter in the San Francisco Bay Area* (September 2011), available at <http://www.baaqmd.gov/~media/files/planning-and-research/research-and-modeling/cost-analysis-of-fine-particulate-matter-in-the-bay-area.pdf> (last accessed March 30, 2017).

³⁰ California Air Resources Board, *Diesel Particulate Matter Health Risk Assessment for the West Oakland Community*, p. 2, (December 2008).

³¹ California Air Resources Board, *Diesel Particulate Matter Health Risk Assessment for the West Oakland Community*, p. 22, (December 2008).

³² California Air Resources Board, *Diesel Particulate Matter Health Risk Assessment for the West Oakland Community*, p. 2, (December 2008).

diesel particulate matter emissions inventory for the West Oakland area, with the remaining diesel particulate matter emissions coming from trains and ships serving the Port area.³³ An estimated 2,800 medium sized, short distance trucks, also known as drayage trucks, serve the Port of Oakland multiple times per week, and there are approximately 10,000 truck trips to and from the Port, with an additional 1,400 truck trips daily between the Port and distribution centers in West Oakland.³⁴ These figures are expected to grow as the Port expands, which will result in additional truck traffic through the West Oakland community. Further expansions of the Port's activities will bring more ships and more trains to the area, further elevating the amount of diesel particulate matter in the air throughout West Oakland, and increasing the resulting adverse health impacts affecting West Oakland residents.

As demonstrated through ARB's 2008 Health Risk Assessment, truck traffic hurts communities and makes it more difficult to build thriving, resilient neighborhoods. People living on busy streets, with trucks rumbling by frequently, are more reluctant to go outside to exercise; residents have fewer opportunities to meet their neighbors and to build a close-knit community within their neighborhood.³⁵ If they are parents they are also more reluctant to let their children play outside. Closely connected communities can provide important physical and mental health benefits;³⁶ truck traffic impedes these benefits for residents of West Oakland.

Moreover, while diesel particulate matter emissions from the Port alone are responsible for approximately 200 excess cancers per million,³⁷ West Oakland residents are consistently exposed to a variety of other, cumulative impacts that result in poor health outcomes in the community. All-cause death rates in West Oakland are higher than all-cause death rates in the city of Oakland overall.³⁸ As a result, West Oakland has one of the lowest life expectancies of all communities in Oakland (see *Figure 4*).

//

//

//

//

³³ California Air Resources Board, *Diesel Particulate Matter Health Risk Assessment for the West Oakland Community*, p. 15, Table 3 (December 2008).

³⁴ UC Berkeley Health Impact Group (UCBHIG), *Health Impact Assessment for the Port of Oakland*, University of California, Berkeley, CA, p. Air-6 (March 2010).

³⁵ UC Berkeley Health Impact Group (UCBHIG), *Health Impact Assessment for the Port of Oakland*, University of California, Berkeley, CA, p. Transportation-9 (March 2010) (showing that communities with higher traffic volumes are not as close-knit as communities with lower traffic volumes).

³⁶ UC Berkeley Health Impact Group (UCBHIG), *Health Impact Assessment for the Port of Oakland*, University of California, Berkeley, CA, p. Transportation-10 – Transportation-11 (March 2010).

³⁷ California Air Resources Board, *Diesel Particulate Matter Health Risk Assessment for the West Oakland Community*, p. 2, (December 2008).

³⁸ Alameda County Public Health Department, *East and West Oakland Health Data Existing Cumulative Health Impacts*, p. 13, West Oakland Resident Action Council (RAC) Meeting (September 5, 2015).

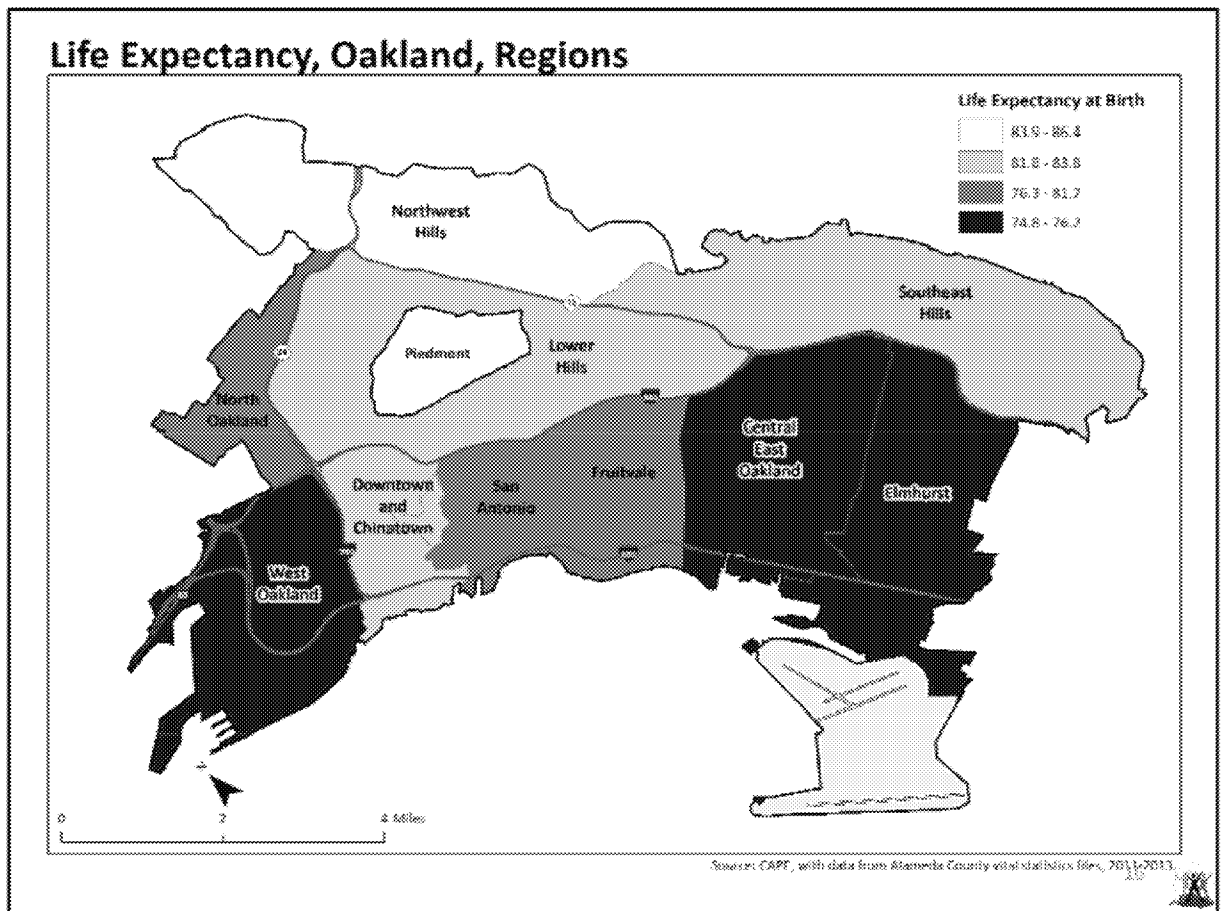


Figure 4 Life expectancies in Oakland's communities.³⁹

When compared to other areas of Alameda County, West Oakland also has elevated rates of emergency room visits due to stroke-related and congestive heart failure hospitalizations, and asthma hospitalizations in children older than 5.⁴⁰

B. History of the Port and Army Base

The Port is the fifth largest container port in the United States and the second largest in the State of California, behind the combined ports of Los Angeles and Long Beach. Established in 1927, the Port is home to 18 ship berths, 236 container cranes, two rail yards and approximately 500 pieces of cargo handling equipment, as well as 2,500 trucks. In 2016, the Port moved over 2 million 20-foot equivalent units of containers in and out of the Bay area.

³⁹ Alameda County Public Health Department, *East and West Oakland Health Data Existing Cumulative Health Impacts*, p. 16, West Oakland Resident Action Council (RAC) Meeting (September 5, 2015).

⁴⁰ Alameda County Public Health Department, *East and West Oakland Health Data Existing Cumulative Health Impacts*, pp. 9-12, West Oakland Resident Action Council (RAC) Meeting (September 5, 2015).

OAB is a 425-acre facility located along the Oakland waterfront, just north of the Port and south of the eastern portion of the San Francisco Bay Bridge.⁴¹ It was originally commissioned to serve as a United States Army base in 1941, and during World War II it developed to serve as a major cargo port.⁴² Following the end of the war, OAB continued to serve as a shipping and rail terminal, providing logistical support for the subsequent Korean, Vietnam and Persian Gulf wars.⁴³ In 1995 the United States Defense Base Closure and Realignment Commission recommended closure of OAB, and it officially closed OAB's operations as an army base in 1999.⁴⁴

Following its decision to close the base, the United States Department of Defense designated a local reuse authority – the Oakland Army Base Reuse Authority – as the entity charged with the oversight of all post-closure redevelopment at OAB.⁴⁵ In order to assist in informing and influencing the ongoing land use changes at OAB, prior to the completion of OAB's closure, the Reuse Authority established the West Oakland Community Advisory Group (WOCAG).⁴⁶ In line with its purpose, the WOCAG met for over ten years to discuss and present community recommendations relating to the new uses and businesses that would benefit West Oakland residents. These recommendations were collected, reviewed and compiled by the Redevelopment Agency until its dissolution, and they were, to an extent, incorporated into the early planning stages for the OAB closure.

In 2000, the Oakland City Council designated OAB and its surrounding properties as a "Redevelopment Area," then under the jurisdiction of the City's Redevelopment Agency, the Port and the County of Alameda, pursuant to a Joint Powers Agreement. The closure process was guided by a "Preliminary Redevelopment Plan" that was formulated with some early input from the WOCAG.⁴⁷ Pursuant to this "Preliminary Redevelopment Plan", the City broadly committed to the "redevelopment, rehabilitation, and revitalization of the area within the boundaries of the [OAB]" and its surroundings.⁴⁸ The City also sub-divided OAB into two general development areas, shown in *Figure 5*, below. The first was a 140-acre "Gateway Development Area," situated in the north and northwest portion of the sub-district, owned by the City and the OAB Redevelopment Agency.⁴⁹ The second was a 170-acre "Port Development

⁴¹ Oakland Base Reuse Authority, *Gateway to the East Bay: Final Reuse Plan for the Oakland Army Base*, Executive Summary, p. 1 (July 2012), available at: <http://www2.oaklandnet.com/government/o/CityAdministration/d/NeighborhoodInvestment/o/OaklandArmyBase/DOWD008829> (last accessed April 3, 2017).

⁴² *Id.*, p. 14.

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ *Id.*, p. 15.

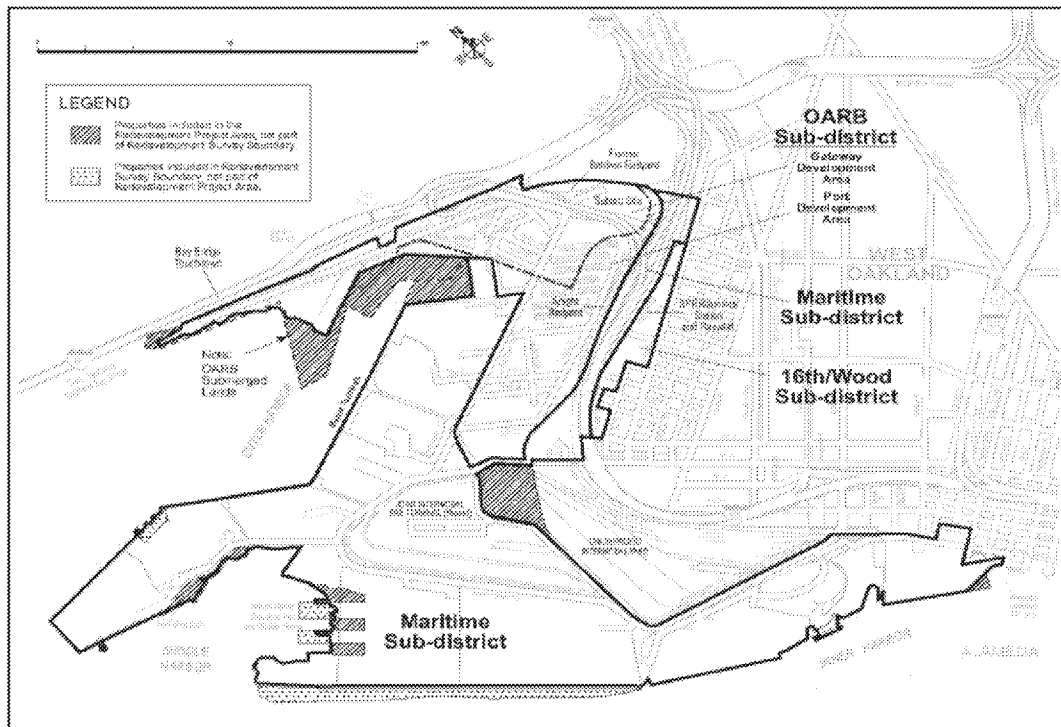
⁴⁶ *Id.*, p. 16.

⁴⁷ See Redevelopment Plan for the Oakland Army Base Redevelopment Project, Adopted June 11, 2000, Amended and Restated on December 21, 2004 (Ordinance No. 12644 C.M.S.), and on June 7, 2005 (Ordinance No. 12672 C.M.S.), p. 2.

⁴⁸ City of Oakland, *Redevelopment Plan for the Oakland Army Base Redevelopment Project* (June 11, 2000)(Amended and restated December 21, 2004 and June 7, 2005), available at <http://www2.oaklandnet.com/oakca1/groups/ceda/documents/report/oak030544.pdf>.

⁴⁹ See LSA Associates for City of Oakland, *2012 Oakland Army Base Initial Study/Addendum*, Ch. 2, pp. 19-20 (May 2012), available at <http://www2.oaklandnet.com/oakca1/groups/ceda/documents/report/oak035061.pdf>.

Area” located in the west and southeast portions of the OAB, owned and operated by the Port.⁵⁰ In addition to these two main sub-areas, the City also designated two additional sub-districts – the “Maritime” sub-district, which is comprised of 1,290 acres owned and operated by the Port; and the “16th and Wood” sub-district – an additional 41 acres owned by various private entities.⁵¹



g. borchard & associates

OARB Area Redevelopment EIR
Figure 3-2 OARB Redevelopment Project Area
April 2002

Figure 5 Oakland Army Base Redevelopment Area Sub-Districts, April 2002⁵²

In 2002, the City approved a new and more detailed “Oakland Army Base Redevelopment Area Plan” and a supporting Environmental Impact Report (EIR) analyzing the effects of the OAB closure and the City’s updated planning proposals for redevelopment on OAB property under the California Environmental Quality Act.⁵³ According to the City’s 2002 approval, the Gateway Development Area would be redeveloped pursuant to a “flexible” alternative land use plan, which specifically contemplated the construction and operation of

⁵⁰ See LSA Associates for City of Oakland, *2012 Oakland Army Base Initial Study/Addendum*, Ch. 2, pp. 19-20 (May 2012), available at <http://www2.oaklandnet.com/oakcal/groups/ceda/documents/report/oak035061.pdf>.

⁵¹ *Id.*

⁵² City of Oakland, *Oakland Army Base Project: Maps*, available at <http://www2.oaklandnet.com/oakcal/groups/ceda/documents/image/dowd007621.jpg> (last accessed April 4, 2017).

⁵³ See Oakland Base Reuse Authority, *Gateway to the East Bay: Final Reuse Plan for the Oakland Army Base*, p. 1 (July 31, 2002), available at <http://www2.oaklandnet.com/government/o/CityAdministration/d/NeighborhoodInvestment/o/OaklandArmyBase/DOWD008829> (last accessed April 3, 2017).

waterfront light-industrial and flexible office space including research and development (“R&D”) offices, as well as other “business-serving retail” and “high-end commercial development” spaces like a “Four Star Hotel.”⁵⁴ While the 2002 plan also included some warehousing and distribution, as well as ancillary maritime support facilities, the majority of land uses specified in the plan consisted of light industrial development, so as to attract businesses focused on industries other than heavy freight industrial activities.⁵⁵

Despite the generally beneficial land-uses considered and approved in the City’s 2002 Redevelopment Plan approval, the community was concerned, at the time, that the Plan did not demonstrate an honest commitment by the City to redevelop the OAB in a way that would genuinely benefit surrounding residents in West Oakland. In 2002, the WOCAG issued recommendations in response to the City’s EIR and proposed Redevelopment Plan, which expressed the community’s concerns with the direction of the City’s land use and planning decisions, and its displeasure with the way their recommendations had been treated up to that point.⁵⁶ Specifically, the WOCAG explained that the 2002 plan approval and related EIR did not provide enough detail regarding the City’s proposed development plans to assure that the OAB redevelopment would confer tangible, direct community benefits.⁵⁷

Just as feared by the community, as both the City and Port continued to receive federal land grants of former OAB land, they began discussions with potential developers seeking to expand Port-related freight activities at OAB, even though the approved Redevelopment Plan designated very limited land for such activities. Notably, these discussions were held while parallel discussions were still taking place among WOCAG members and City staff – thus, while the WOCAG was still developing its input on the OAB development process.⁵⁸

Between 2006 and 2008, WOCAG continued to submit its recommendations to the City. During that time, the WOCAG focused its recommendations on the City prioritizing development proposals that result in less truck traffic through West Oakland, due to health

⁵⁴ Oakland Base Reuse Authority, *Gateway to the East Bay: Final Reuse Plan for the Oakland Army Base*, Section 3.2.1, p. 27 (July 31, 2002), available at <http://www2.oaklandnet.com/government/o/CityAdministration/d/NeighborhoodInvestment/o/OaklandArmyBase/DOWD008829> (last accessed April 3, 2017).

⁵⁵ *Ibid.*; see also, LSA Associates for City of Oakland, *2012 Oakland Army Base Initial Study/Addendum*, p. 20, Table 2-1 (May 2012), available at <http://www2.oaklandnet.com/oakcal/groups/ceda/documents/report/oak035061.pdf> (last accessed April 4, 2017) (comparing the land-use designations approved in 2002, with those considered and ultimately approved by the City a decade later).

⁵⁶ George M. Bolton III, West Oakland Community Advisory Group to Scott Gregory, EIR Project Manager, City of Oakland (June 11, 2002) (noting that “it is an insult to the many citizens of the City of Oakland who have given freely of their time and effort to serve the [Oakland Army Base Reuse Authority] and the City of Oakland in the base conversion process [only] to have their efforts ignored and not evaluated in this EIR”).

⁵⁷ George M. Bolton III, West Oakland Community Advisory Group to Scott Gregory, EIR Project Manager, City of Oakland (June 11, 2002).

⁵⁸ West Oakland Community Advisory Group, *Community Recommendations for reuse of the City of Oakland “Gateway” Development Area*, pp. 4-5 (June 2008).

impacts many residents were already facing due to the Port's growing activity.⁵⁹ WOCAG wanted businesses such as truck servicing and truck parking to be relocated out of the community, and to "leave their former sites available for more appropriate, i.e. lower impact commercial use."⁶⁰

Notwithstanding the input received from WOCAG, however, the City continued its discussions with Prologis and CCIG, and began negotiating an agreement with the developers, to build a large-scale warehouse and shipping development project for portions of all three sub-districts created under the City's prior approvals, which became jointly termed, the "Gateway Development Area," pictured in *Figure 6*, below.⁶¹

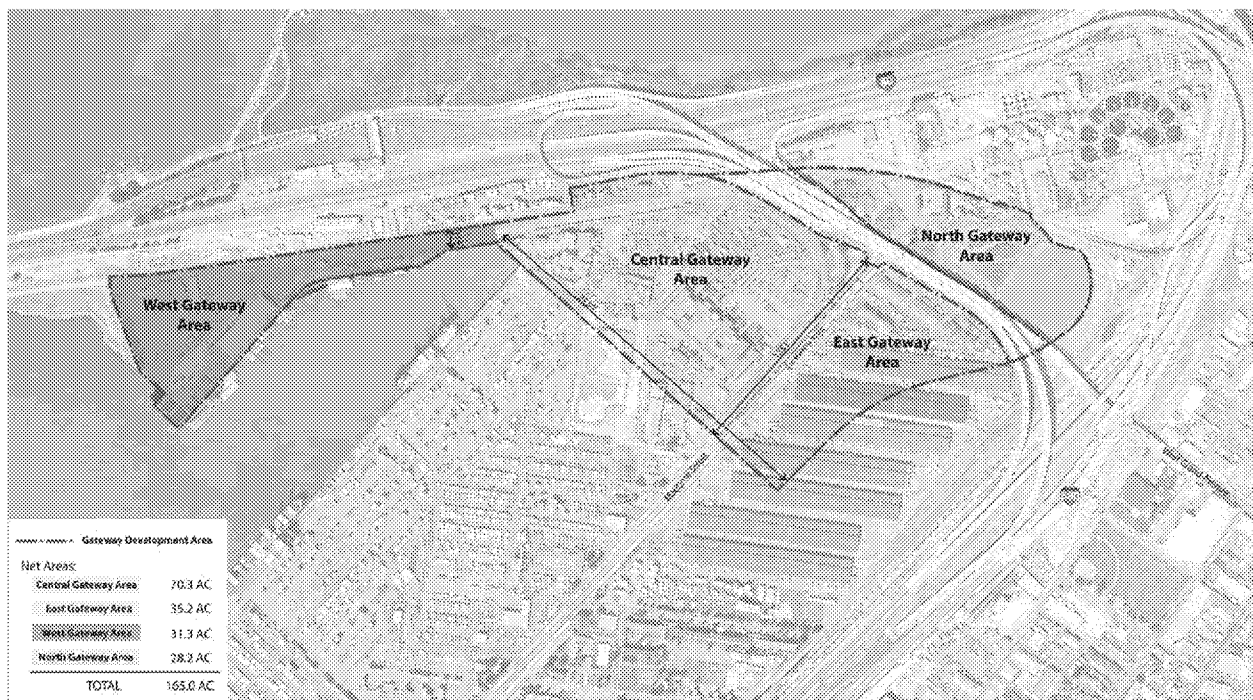


Figure 6 Gateway Development Area.⁶²

⁵⁹ West Oakland Community Advisory Group, *Re: Army Base-Economic Development* (February 20, 2006); West Oakland Community Advisory Group, *Community Recommendations for reuse of the City of Oakland "Gateway" Development Area* (June 2008).

⁶⁰ West Oakland Community Advisory Group, *Community Recommendations for reuse of the City of Oakland "Gateway" Development Area*, p. 7 (June 2008).

⁶¹ LSA Associates for City of Oakland, *2012 Oakland Army Base Initial Study/Addendum*, Ch. 2, p. 21 (May 2012), available at <http://www2.oaklandnet.com/oakcal/groups/ceda/documents/report/oak035061.pdf> (last accessed April 4, 2017) ("in 2009 the joint venture between Prologis and [CCIG] was selected as the master developer").

⁶² Oakland Redevelopment Agency, *Pre-Development Planning for the Oakland Army Base Gateway Development Area*, Figure 3-1, available at <http://www2.oaklandnet.com/oakcal/groups/ceda/documents/report/dowd007624.pdf> (last accessed April 4, 2017).

C. The City's Port Expansion and "Gateway Development", or 'Oakland Global', Approvals

The land uses proposed in the City's 2002 Redevelopment Plan included a "tech park" comprised of R&D office buildings, and light to moderate industrial and retail development including big box retail stores, hotels and a Cineplex.⁶³ These land uses did not include as the predominant use for the area the type of heavy industrial, large-scale warehouse, shipping, distribution and maritime activity that the City began to consider through its subsequent negotiations with Prologis and CCIG. Yet, in 2012, the same year the City received its \$2 million comprehensive TIGER 2 planning grant from DOT, the City approved the "Oakland Army Base: Outer Harbor Terminal Project" and executed an exclusive development agreement with Prologis and CCIG to expand port-related maritime activities at OAB.⁶⁴ Rather than conduct a new environmental review, however, the City re-approved its decade-old environmental review document that the City's staff presented to the Council as a mere addendum to the EIR analysis prepared and approved in 2002.⁶⁵ Rather than designing new and more appropriate mitigation corresponding to the City's new development proposals, the City also claimed that specific mitigation would be determined at a later date, when specific projects were approved.

To give an example of the drastic deviation the City took from its prior approvals, the City's 2012 Redevelopment Plan for the Outer Harbor Terminal Project involved approximately 2.5 million square feet of warehouse/distribution and maritime-related logistics uses, as compared to only 175,000 square feet of office/R&D, where as its 2002 approvals involved only 300,000 square feet of warehouse and distribution development and approximately 1.5 million square feet of office/R&D.⁶⁶

Unsurprisingly, BAAQMD as well as other agencies including ARB, as well as West Oakland residents expressed their concern with the City's proposed "Outer Harbor Terminal Project," which soon simply became known as the Gateway or Oakland Global Logistics Center development project. BAAQMD in particular encouraged the City to analyze how its new development plans would impact future residents near new and existing sources of pollution, and

⁶³ See, LSA Associates for City of Oakland, *2012 Oakland Army Base Initial Study/Addendum*, Attachment B, p. 4 (May 2012), available at <http://www2.oaklandnet.com/oakcal/groups/ceda/documents/report/oak035061.pdf> (last accessed April 4, 2017) (summarizing the differences between the 2012 project, and the project analyzed and approved in 2002).

⁶⁴ See, Development Agreement By and Between the City of Oakland and Prologis CCIG Oakland Global LLC, Regarding the Property and Project Known as "Gateways Development/Oakland Global, dated July 16, 2013, available at: <http://www2.oaklandnet.com/oakcal/groups/ceda/documents/report/oak055211.pdf> (last accessed, March 30, 2017).

⁶⁵ See, *ibid.* ("The primary difference between the 2012 Project and what was proposed for the same geographic location in the 2002 Project is a shift from office R&D to a greater amount of warehouse distribution and maritime logistics uses as the predominant use.")

⁶⁶ See, LSA Associates for City of Oakland, *2012 Oakland Army Base Initial Study/Addendum*, p. 4 (May 2012), available at <http://www2.oaklandnet.com/oakcal/groups/ceda/documents/report/oak035061.pdf> (last accessed April 4, 2017) (summarizing the differences between the 2012 project, and the project analyzed and approved in 2002).

provided specific suggestions for doing so.⁶⁷ But the City refused to conduct an additional impact analysis, again claiming that it was appropriate to defer any such analysis to a later time, and a later approval.⁶⁸

On December 4, 2013, the City approved an “Army-Base Construction-Related Air Quality Plan,” purporting to address construction related impacts but again declining to analyze or mitigate impacts from the long-term operation of the Gateway development projects, or the cumulative construction and operation of the related additional Gateway development projects. The City again received letters from BAAQMD and other agencies, identifying shortcomings in the City’s proposed mitigation set forth in the “Construction-Related Air Quality Plan.”⁶⁹ The City again refused to incorporate the types of analysis or mitigation suggested by the agencies.

Most recently, on October 4, 2016, the City approved an additional Northeast Gateway construction management plan allowing Prologis and CCIG to begin construction at the Northeast Gateway site on November 1, 2016, and to eventually operate a global trade and logistics complex that is worlds different than what the City proposed and approved in its initial land use decisions relating to the OAB, and greater “Redevelopment Area.” After the City approved this most recent construction management plan, Prologis issued three “45-day notices” in the month of February, 2017, which relate to three additional air quality plans currently under review by the City: (1) an operations air quality plan for the Northeast Gateway project, which was issued on February 2, 2017; (2) a “Construction and Operations” air quality plan, for the Southeast and Central Gateway Projects, issued on February 3, 2017; and (3) a “Phase 3 Construction” air quality plan, issued on February 9, 2017. To this day, neither the City nor Port has updated the cumulative air quality analysis to analyze or mitigate, in a meaningful manner, the ongoing air pollutant emissions from the construction and operation of the full Gateway, or Oakland Global Logistics Center development project.

IV. LEGAL BACKGROUND

DOT regulations implementing Title VI state that “[n]o person in the United States shall, on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under, any program to which this part applies.” 49 C.F.R. § 21.5(a).

These regulations also include the following prohibitions of specific discriminatory acts by recipients of federal funds:

⁶⁷ Jean Roggenkamp, Bay Area Air Quality Management District to Ulla-Britt Jonsson, City of Oakland, *Subject: West Oakland Specific Plan Notice of Preparation of a Draft Environmental Impact Report* (November 21, 2012).

⁶⁸ See City of Oakland, *West Oakland Specific Plan: Final Environmental Impact Report*, pp. 4-21 to 4-22 (May 2014).

⁶⁹ See, generally, Rachel Flynn, Director, Department of Planning and Building to Deanna J. Santana, City Administrator, *Subject: Approval of Army Base Construction-Related Air Plan* (December 4, 2013), available at <http://www2.oaklandnet.com/oakcal/groups/ceda/documents/report/oak044541.pdf> (last accessed April 4, 2017).

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program. . . may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin.

(3) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination under any program to which this regulation applies, on the grounds of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this part.

49 C.F.R. § 21.5(b).

A recipient may not make a selection of a site or location of a facility if the purpose of that selection, or its effect when made, is to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this rule applies, on the grounds of race, color, or national origin; or if the purpose is to, or its effect when made will, substantially impair the accomplishment of the objectives of this part.

49 C.F.R. § 21.5(d).

EPA regulations implementing Title VI state that “[n]o person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving EPA assistance on the basis of race, color, [or] national origin[.]” 40 C.F.R. § 7.30. The regulations also provide a non-exclusive list of specific, prohibited discriminatory acts:

(b) A recipient shall not use criteria or methods of administering its program or activity which have the effect of subjecting individuals to discrimination because of their race, color, national origin, or sex, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity with respect to individuals of a particular race, color, national origin, or sex.

(c) A recipient shall not choose a site or location of a facility that has the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program or activity to which this part applies on the grounds of race, color, or national origin or sex; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of this subpart.

40 C.F.R. § 7.35.

These regulations make clear that discrimination on the basis of race is a violation of Title VI whether it is the purpose of the decision or its effect. 49 C.F.R. § 21.5(d); 40 C.F.R. § 7.35(c).

V. VIOLATIONS OF TITLE VI

A. Discriminatory Acts

The City's approval of the Northeast Gateway Construction Management Plan on October 4, 2016 is the latest example of the City and Port's discriminatory actions regarding the development and expansion of harmful freight activities at the Port and OAB. The approval is part of a continuing pattern of actions utilizing criteria and methods that have the purpose or effect of subjecting the surrounding community of color to the disproportionate externalities of that freight activity.

Since 2012, the City, in particular, has sought to abandon the original commitment to develop the OAB in a way that would benefit the surrounding community. While the WOCAG was asked to provide input on recommendations for development early in the OAB Redevelopment process, the City proceeded with its own negotiations to expand freight-related activities notwithstanding the community recommendations, and notwithstanding the fact that such activities would add to the impacts on the already overburdened surrounding communities of color. The City has also consistently refused to consider the input of advisory and stakeholder groups including the WOCAG, who urged the City to prioritize development proposals that would result in less truck traffic through West Oakland.⁷⁰ At each step of the way, the City has declined to analyze the impacts of expanded freight activities, and has declined to adopt specific mitigation by claiming that such analysis and mitigations were not required or that they would be addressed at a later point.

Since the abrupt change in the proposed OAB redevelopment plan in 2012, the community and concerned agencies have been demanding analysis of the impacts, and assurances that the effects of expanding freight activities will be mitigated. At each step, the City has declined to do any more than assure that the project will comply with existing minimum regulatory requirements.

In 2013, BAAQMD wrote to the City to highlight the City's lax mitigation measures for the OAB redevelopment project, pointing out that the City's plan for reducing construction emissions from the OAB included mitigation measures with easy loopholes for industry. The plan required lower-emitting equipment to the extent that it was "readily available" in the Bay

⁷⁰ West Oakland Community Advisory Group, *Re: Army Base-Economic Development* (February 20, 2006); West Oakland Community Advisory Group, *Community Recommendations for reuse of the City of Oakland "Gateway" Development Area* (June 2008).

Area.⁷¹ The BAAQMD noted that “the Plan does not include any guidance on how it will be determined if the equipment is ‘readily available’ or ‘cost effective.’”⁷² BAAQMD concluded its letter with a list of specific recommended requirements for all OAB construction activity. But the City declined to make any of the recommended changes.

In 2014, both BAAQMD and the Alameda County Public Health Department submitted letters raising new concerns with the City’s planning activities. The Alameda County Public Health Department’s letter urged the City to strengthen the proposed mitigation measures, because “[impacts from development at the Port and OAB] will further exacerbate existing health conditions in West Oakland.”⁷³ BAAQMD contacted the City’s Strategic Planning Division to recommend additional air quality controls, noting that the West Oakland community experiences a higher cancer risk than any other Bay Area community and compliance with minimum regulatory requirements will not be sufficient to reduce health risks in the community to a safe level.⁷⁴ Again, the City took no action.

In 2015, BAAQMD expressed concern about the Port’s and the City’s continued reliance on the environmental review conducted in 2002, and re-approved in 2012 as a basis for the continued expansion of port-related infrastructure development at OAB. Among other concerns, BAAQMD expressed serious trepidation regarding the facts that both the 2002 and 2012 reports were based on outdated national ambient air quality standards for fine particulate matter emissions.⁷⁵ In addition, the air quality analysis provided in the City’s subsequent air quality management plan analyses only considered construction emissions, and not the long-term impacts from continued development at the Port and OAB.⁷⁶

Most recently, in 2016, BAAQMD, ARB and WOEIP all submitted comments on the Northeast Gateway Construction Management Plan. In a letter addressed to the City, dated June 3, 2016, BAAQMD expressed its concern that, again, the City’s proposed management plan exclusively dealt with the air quality impacts associated with construction, and failed to consider the long-term air quality impacts that would result from the project. BAAQMD also complained that even within its limited scope, the plan did not include air quality mitigation measures

⁷¹ Jean Roggenkamp, Bay Area Air Quality Management District to Alisa Shen, City of Oakland, *Subject: Comments on the Oakland Army Base Draft Mitigation Monitoring and Reporting Program (MMRP) Project Manual – Components for Complying With Construction Related Air Quality Requirements (Plan)* (July 22, 2013).

⁷² Jean Roggenkamp, Bay Area Air Quality Management District to Alisa Shen, City of Oakland, *Subject: Comments on the Oakland Army Base Draft Mitigation Monitoring and Reporting Program (MMRP) Project Manual – Components for Complying With Construction Related Air Quality Requirements (Plan)* (July 22, 2013).

⁷³ Muntu Davis, Alameda County Health Care Services Agency, Public Health Department to Ulla-Britt Jonsson, City of Oakland, *Subject: Re: West Oakland Specific Plan Draft Environmental Impact Report and Public Health* (March 17, 2014).

⁷⁴ Jean Roggenkamp, Bay Area Air Quality Management District to Ulla-Britt Jonsson, City of Oakland, *Subject: Draft Environmental Impact Report for the West Oakland Specific Plan* (March 20, 2014).

⁷⁵ Jean Roggenkamp, Bay Area Air Quality Management District to Tim Leong, Port of Oakland, *Subject: Roundhouse Area Improvements Project Initial Study/Negative Declaration* (June 24, 2015).

⁷⁶ Jean Roggenkamp, Bay Area Air Quality Management District to Tim Leong, Port of Oakland, *Subject: Roundhouse Area Improvements Project Initial Study/Negative Declaration* (June 24, 2015).

necessary to protect health.⁷⁷ ARB's letter similarly detailed recommendations for additional mitigation measures that ARB described as "critical to reducing emissions and protecting public health." WOEIP also urged the City to commit to mitigation to address the adverse impacts its approval would have on the surrounding community. These included installing solar panels on warehouses that will be constructed as part of the Gateway project development, and requiring zero-emission technologies for short-haul trucks, including drayage trucks, and cargo handling equipment.⁷⁸ Despite the fact that the mitigation measures requested were consistent with the City's minimal mitigation measures approved in 2002, the City declined to include any of the recommended mitigation.

This history of rejecting recommended mitigation is the product of a piecemealed process that denies meaningful public participation by narrowing the scope of the issues that will be considered at each step of the development approvals. When WOEIP raised concerns about the lack of zero-emission technology requirements for the Northeast Gateway project, and the failure to create an emission reduction plan for the development,⁷⁹ Prologis, the developer of the Northeast Gateway/Global Logistics Center project, argued that these concerns were not appropriate for the air quality plan under consideration, and that they could be raised when the Air Quality Operations Plan is developed.⁸⁰ As a result, the City Administrator dismissed the community concerns in the approved plan.⁸¹ All involved in these approvals, however, know that the opportunities to mitigate emissions from operations will be limited by the physical projects that have been built as a result of the October 4, 2016 approval.

The October 4, 2016 approval demonstrates that the City's promise of future analysis and mitigation are empty. It is not sufficient to consider mitigation after construction is complete because mitigation must be designed into the project, prior to its construction. The October 4, 2016 approval, and subsequent initiation of construction at the Northeast Gateway site show that the City intends to allow development that will disproportionately impact the surrounding communities of color without mitigation. Whether purposeful or just in effect, the City's October 4, 2016 approval denied the benefits of redevelopment investments to the surrounding communities of color. This decision, like the various decisions that have preceded it, was made with the clear intention to streamline approval of expanded freight activities by setting up a process that precluded meaningful public participation. The decision also avoided mitigation requirements that would minimize or prevent impacts on the surrounding communities of color.

⁷⁷ Jean Roggenkamp, Bay Area Air Quality Management District to Darin Ranelletti, City of Oakland, *Subject: Northeast Gateway Construction Management Plan* (June 3, 2016).

⁷⁸ Heather Arias, California Air Resources Board to Darin Ranelletti, City of Oakland (May 31, 2016).

⁷⁹ Margaret Gordon, West Oakland Environmental Indicators Project to Darin Ranelletti, City of Oakland Bureau of Planning, *Subject: Comments Standard Conditions of Approval/Mitigation Measures for the Prologis* [sic] (May 23, 2016); Ditching Dirty Diesel Collaborative to Robbie Morris, California Air Resources Board (May 25, 2016).

⁸⁰ Cory Chung, Development Manager, Prologis to Darin Ranelletti, City of Oakland Bureau of Planning, *Subject: RE: DRX151553 – Oakland Global Logistics Center #1 – Response to Air Quality Stakeholder Comments to SCAMMRP Public Outreach Element (Mitigation Measure PO-1)* (August 30, 2016).

⁸¹ Rachel Flynn, Director, Planning and Building Department to Sabrina B. Landreth, City Administrator, *Subject: Construction-Related Air Quality Plan by Prologis for Northeast Gateway at Army Base site*, p. 4 (September 8, 2016).

The City's October 4, 2016 approval is, moreover, a single component of the City's and Port's continuous, systemic pattern of approving, or directly engaging in, the expansion of port-related infrastructure development. This pattern will continue as the City and Port pursue their expansion goals in the OAB Gateway/Oakland Global Logistics Center development. This pattern of conduct results in direct and immediate adverse effects on West Oakland residents who are predominantly people of color, and therefore violates Title VI of the Civil Right Act of 1964.

B. Adverse Impacts

As outlined above, freight activity in and around the West Oakland community is responsible for a host of adverse impacts including elevated cancer risks, higher rates of asthma attacks, and disruption of the basic quality of life in the community.⁸² The October 4, 2016 approval of the Northeast Gateway construction-related air quality plan and the City's ongoing approvals of the construction and operations of the full OAB Gateway/Oakland Global Logistics Center development area will add to the already adverse impacts suffered by the surrounding community as a result of freight activities. The October 4, 2016 approval was the first approval of one of several components to the Oakland Global Logistics Center project. This approval provided the City with an opportunity to ensure that the project was designed, and would be built in a way to limit impacts on the surrounding community, but the City refused to ensure that adequate health and safety protections were in place before allowing the developers to break ground on November 1, 2016.

In its 2008 Health Risk Assessment, ARB found that on-road heavy duty diesel trucks were the largest source of cancer risk in the community, followed by ocean going vehicles, harbor craft, locomotives, and cargo handling equipment.⁸³ All of these sources are associated with the Port's, and now with the OAB's, expanded activities.

While ARB's assessment indicated that emissions would decrease in the future as a result of regulatory actions, the assessment estimated that even after emissions reductions, "the remaining cancer risk will [still] be greater than 200 in a million in the West Oakland community," and that any reduction in emissions would not resolve the disparate impacts that West Oakland residents face when compared to residents living elsewhere throughout the City or the County.⁸⁴ ARB's assessment recommended "collective and innovative efforts" at all levels of government to reduce emissions and improve health outcomes in West Oakland, including a

⁸² Grace Rubenstein, *Air Pollution Controversy Swirls Around Oakland Army Base Development*, KQED (May 6, 2014), available at <https://www.kqed.org/news/air-pollution-dispute-west-oakland-army-base/> (last accessed March 31, 2017); Katy Murphy, *Pollution takes heavy toll on Bay Area children with asthma*, The Mercury News (February 9, 2013), available at <http://www.mercurynews.com/2013/02/09/pollution-takes-heavy-toll-on-bay-area-children-with-asthma/> (last accessed March 31, 2017).

⁸³ California Air Resources Board, *Diesel Particulate Matter Health Risk Assessment for the West Oakland Community*, p. 2 (December 2008).

⁸⁴ California Air Resources Board, *Diesel Particulate Matter Health Risk Assessment for the West Oakland Community*, p. 4 (December 2008).

transition to clean technologies.⁸⁵ The City's approval of the Northeast Gateway Construction Management Plan, however, fails to provide any innovative or good faith effort to reduce emissions at and around the project. The City's approval does the opposite by rubber stamping the construction and operation of new large-scale port related infrastructure that will only exacerbate the existing pollution burdens West Oakland residents face.

The Alameda County Public Health Department urged the City to require a more comprehensive evaluation of, and mitigation for, the Northeast Gateway Project's increase in diesel emissions, which are also a major concern given the existing health burdens in West Oakland. Yet the City, as always, refused to adhere to the County Public Health Department's recommendations, and instead chose to adhere to its construction-only approval decision.

C. Disproportionality

The October 4, 2016 approval of the Northeast Gateway construction-related air quality plan is the latest action by the City and Port to push through more freight-related development that already disproportionately impacts the communities of color in West Oakland. The Alameda County Public Health Department has found that racial disparities impact health outcomes throughout the county, and especially in West Oakland.⁸⁶ People of color are more likely to experience the negative health outcomes detailed above. As described by the Alameda County Public Health Department, "even at the same rung, African Americans typically have worse health and die sooner than their White counterparts. In many cases, so do other populations of color."⁸⁷

As described above, West Oakland residents are also more likely to face decades of persistent poverty. Black people in Oakland are far more likely to be homeless than any other ethnic group.⁸⁸ These same factors are at play within West Oakland, a community that is predominantly populated by people of color. West Oakland faces higher rates of illness, crime, and higher death rates than predominantly White communities in Oakland. Residents of West Oakland face stresses that residents of other communities may never endure.

In recent years, various Bay Area media outlets have published heartbreaking stories of West Oakland residents who fear for their children's lives due to air pollution that triggers

⁸⁵ California Air Resources Board, *Diesel Particulate Matter Health Risk Assessment for the West Oakland Community*, pp. 4-6 (December 2008).

⁸⁶ See Alameda County Public Health Department, *Life and Death from Unnatural Causes: Health and Social Inequity in Alameda County – Executive Summary* (2008); UC Berkeley Health Impact Group (UCBHIG), *Health Impact Assessment for the Port of Oakland*, p. ES-2 (March 2010), available at <http://www.acphd.org/media/53628/unnatcs2008.pdf> (last accessed April 4, 2017).

⁸⁷ Alameda County Public Health Department, *Life and Death from Unnatural Causes: Health and Social Inequity in Alameda County*, pp. 7-8 (2008), available at <http://www.acphd.org/media/53628/unnatcs2008.pdf> (last accessed April 4, 2017).

⁸⁸ Alameda County Public Health Department, *Life and Death from Unnatural Causes: Health and Social Inequity in Alameda County*, p. 71, Figure 33 (2008), available at <http://www.acphd.org/media/53628/unnatcs2008.pdf> (last accessed April 4, 2017).

possibly fatal asthma attacks.⁸⁹ These media reports, as well as anecdotal reports that have been relayed to WOEIP staff, describe parents making the difficult decision to uproot their lives in West Oakland and move to communities that are less polluted and less disrupted by truck traffic.⁹⁰ People want to build communities that allow them to connect with their neighbors, to enjoy parks, and to send their children to play outside. The land gifts of the former OAB properties along with multiple federal grants were intended to spur redevelopment that would benefit the surrounding communities. Instead, the City and Port have decided to “double-down” on the harmful activities that created the current conditions in West Oakland. The City and Port have manipulated their decision-making processes to prevent public participation and avoid costly mitigation investments that might interfere with such development. The October 4, 2016 approval is the latest in a string of decisions that, in purpose or effect, are destroying the vision of a sustainable and healthy West Oakland that residents want to see, and forcing those residents, mostly people of color, to either bear the disproportionate burdens or pack up and move elsewhere.

D. Less Discriminatory Alternatives

Throughout the various actions outlined above, the City and Port have declined to accept recommendations from either the community or expert agencies on process, analysis, and mitigations. The following less discriminatory alternatives were available, and continue to be available to both the City and Port:

1. The City and Port have the option and opportunity, but have continuously refused, to engage the community in a meaningful process by which to receive and incorporate their input, including their opposition to the Gateway and Oakland Global Logistics Center development proposals, and the continued expansion of the Port’s activities.

Specifically, the City has the opportunity, but has refused, to send notifications regarding each of its piecemealed construction and operation related approvals to all neighborhood residents. The City has also failed to provide clear and consistent opportunities for neighboring residents to provide their input regarding the City’s process for ensuring that the immediate community health and safety concerns from its development approvals are addressed.

⁸⁹ Grace Rubenstein, *Air Pollution Controversy Swirls Around Oakland Army Base Development*, KQED (May 6, 2014), available at <https://www.kqed.org/news/air-pollution-dispute-west-oakland-army-base/> (last accessed March 31, 2017); Katy Murphy, *Pollution takes heavy toll on Bay Area children with asthma*, The Mercury News (February 9, 2013), available at <http://www.mercurynews.com/2013/02/09/pollution-takes-heavy-toll-on-bay-area-children-with-asthma/> (last accessed March 31, 2017).

⁹⁰ Grace Rubenstein, *Air Pollution Controversy Swirls Around Oakland Army Base Development*, KQED (May 6, 2014), available at <https://www.kqed.org/news/air-pollution-dispute-west-oakland-army-base/>; See also City of Oakland, *West Oakland Specific Plan: Final Environmental Impact Report*, p. 4-6 (May 2014), available at <http://www2.oaklandnet.com/oakcal/groups/ceda/documents/report/oak049140.pdf> (last accessed April 4, 2017) (“While West Oakland’s population has increased by nearly 2,000 people between 1990 and 2010 (at a rapid rate of 15%), the African American population of West Oakland has declined by nearly 5,000 people during the same time period.”).

The City and Port also have the opportunity, but have refused, to post project-related approval documents at the various community organizations, institutions and gathering places around West Oakland, including but not limited to: the West Oakland Senior Center, city libraries, the West Oakland Youth Center and the Hoover Resident Action Council. The City has also refused to require the developers, Prologis/CCIG, to do the same.

The City has also consistently refused, despite being urged by various state, local, county and federal agencies, to convene a transparent interagency and community inclusive process by which to develop and implement a comprehensive assessment of the impacts caused by its land-use and development decisions at the Port and OAB and to both established and implement an updated mitigation, monitoring and reporting program that considers the level and extent of the full Gateway and Oakland Global Logistics Center and expanded Port operations.

2. The City has the option, but refuses, to consider the effects of the full operation of the Prologis and CCIG development of all three Gateway sub-areas prior to issuing its piecemealed approvals. The City and Port also have the option to update their analysis of impacts instead of relying on the outdated 2002 analyses for a redevelopment plan that was drastically different than the current development plans and approvals before the City.
3. The City and Port have had numerous opportunities, but have refused, to develop, or require the development of, a meaningful emissions reduction plan based on an accurate and updated assessment of the current and foreseeable levels of increased freight transport and other heavy infrastructure, maritime, shipping, distribution, storage and Port-related activities occurring at and along the Port and OAB including increases in rail and maritime emissions that are inconsistent with existing rail and maritime emission reduction standards.
4. The City and Port have had the option, but have failed, to produce or, at a minimum, require, a comprehensive truck management plan to address impacts from growing freight activities on the community of West Oakland.⁹¹

Specifically, both the City and Port have had the opportunity to, but have refused, to develop any requirements for zero-emission technologies at OAB or the Port, which would alleviate some of the air pollution impacts of additional truck traffic in and near West Oakland neighborhoods. They have also refused to require stricter limits (e.g. two minute limits) on diesel truck idling times to address existing health burdens affecting West Oakland residents, and in particular school children throughout West Oakland.

⁹¹ The Port's approval a drayage truck management plan for the Port fails to address the impacts that increased truck traffic has on the Port-*adjacent* roadways and truck traffic problems on off-Port property, e.g., the West Oakland community.

The City and Port also have the opportunity but refuse to require plug-in infrastructure as a design feature of all construction, for the Gateway and Oakland Global Logistics Center development to minimize emissions specifically caused by highly polluting refrigerated truck units serving the new Gateway developments.

The City and Port have also had the opportunity, but have refused, to engage in the planning, implementation and enforcement of Truck hauling routes that are designed to minimize community exposures to emissions, fugitive dust, potential hazardous materials, vibrations and traffic safety issues.

Both the City and Port have had the opportunity, but have refused, to enforce parking restrictions throughout the West Oakland residential community. The City has similarly refused to develop or require an enforceable West Oakland Truck Route as a part of its approved construction management Plan for the Northeast Gateway project, or as part of its ongoing approvals for the larger Gateway or Oakland Global Logistics Center project.

Both the City and Port have also had numerous opportunities, but have refused, to accept or apply for additional funding to support targeted emission reduction efforts at the Port, OAB and throughout West Oakland.

5. In large part due to their failure to require either a comprehensive truck management plan, or a meaningful emission reduction plan, both the City and Port have similarly refused to mitigate the negative air quality and resulting health impacts or other disruptions and adverse effects on the quality of life of West Oakland residents, caused by the continued increase in truck traffic to and from the Port and the OAB Gateway/Oakland Global Logistics Center properties.

VI. Relief

Complainant requests that the DOT Departmental Office of Civil Rights and the EPA Office of Civil Rights accept this complaint and investigate whether the City and Port have violated Title VI of the Civil Rights Act and its implementing regulations, and indeed whether they continue to violate Title VI of the Civil Rights Act.

//

//

//

//

//

//

Complainant further requests that the City and Port be brought into compliance by: (a) requiring the City to withdraw its approvals of the Gateway construction management plans unless and until the City conducts a full review of the construction and long-term operation of all of the Gateway areas, and unless and until the City engages the surrounding community in a meaningful process by which to incorporate their input into new mitigation measures, emission controls, and conditions of approval for the development of the Gateway projects; (b) requiring the Port to coordinate with the City to develop a truly comprehensive truck management and Port emission reduction plan; and (c) Conditioning all future grants and awards from both EPA and DOT to both the City and Port on adequate assurances that the actions of both recipients will comply with Title VI as detailed above.

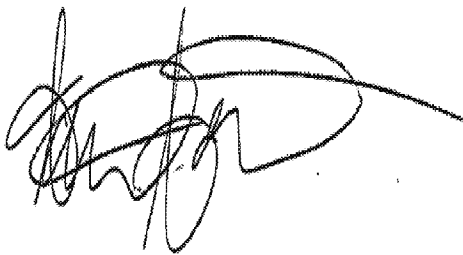
Sincerely,

A handwritten signature in black ink, appearing to be 'Yana Garcia', with a large, stylized 'Y' and 'G'.

Yana Garcia

Paul Cort

Attorneys for West Oakland Environmental Indicators Project

A handwritten signature in black ink, appearing to be 'Adenike Adeyeye', with a large, stylized 'A' and 'A'.

Adenike Adeyeye

Research and Policy Analyst

Earthjustice

50 California Street, Suite 500

San Francisco, CA 94111

ygarcia@earthjustice.org

pcort@earthjustice.org

adeyeye@earthjustice.org

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 4/5/2017 4:10:05 PM
To: David Vintze [DVintze@baaqmd.gov]
Subject: Question: Request for a meeting

Dave - Just had time to read your note thru in detail, nice work. Hope you saw I'm trying to spring the complaint and one way or another this should happen soon. In meantime, are you OK with my sharing your email below (the one to the City, not to us) with DOT and DHS ?

Yesterday we conducted our first internal training on T6. Among our main "lessons" learned so far were that T6 and EJ have to be addressed together and that once a T6 complaint has been filed the negotiation path, even informal, is often the most productive approach to resolving substantive concerns. I'm hopeful this may mean that, with the table being reset by the T6 complaint, discussions can proceed/continue soon, but in a context including T6 as well as the District's steadfast and detailed posture over the years (much footnoted in the complaint) up to and including your email yesterday to the City.

Richard

From: David Vintze <DVintze@baaqmd.gov>
Sent: Wednesday, April 5, 2017 7:39 AM
To: Grow, Richard; Marvin, Cynthia@ARB (cynthia.marvin@arb.ca.gov); Elizabeth Yura (eyura@arb.ca.gov); Lee, Anna, Public Health, CAPE (Anna.Lee@acgov.org)
Subject: FW: Request for a meeting

Hello Everyone – there has been some movement from the City to discuss operational plans for the OAB. Below is my response to an email from Patricia McGowan in part asking me to attend a meeting with the City before they release a draft operational plan they received from the developer. I have requested in my response that the City set up a meeting with the public agency staff participating in the stakeholder process. The City has also requested that the Air District modify our presentation to our Mobile Source Committee to reflect that an operational mitigation plans has been prepared, which we still haven't seen yet. The City plans on attending the MSC meeting, I hope some of you can also to speak primarily of the opportunities available to make this a green port. I plan on updating Ms. Margaret and Brian later today. Dave

From: David Vintze
Sent: Tuesday, April 4, 2017 1:42 PM
To: 'McGowan, Patricia' <PMcGowan@oaklandnet.com>
Cc: Ranelletti, Darin <DRanelletti@oaklandnet.com>; Cole, Doug <DCole@oaklandnet.com>; Monetta, John <JMonetta@oaklandnet.com>; Cappio, Claudia <CCappio@oaklandnet.com>; Pat Cashman <ptrckcshmn@gmail.com>; Wald, Mark <MWald@oaklandcityattorney.org>; Damian Breen <dbreen@baaqmd.gov>; Jean Roggenkamp <jroggenkamp@baaqmd.gov>; Henry Hilken <HHilken@baaqmd.gov>
Subject: RE: Request for a meeting

Hi Patricia,

Your summary is mostly correct but misses the most salient points of our discussion. We were discussing why the stakeholder group does not have any confidence in the City and its stakeholder process to ensure the air quality

measures in the MMRP and LDDA would be implemented. I referenced the “underground” horizontal (#1) improvements that have occurred as an example of missed opportunities because the operational mitigation programs/plans had not been developed prior to the City’s approval of the underground infrastructure. If the City had required the operational mitigation programs/plans called for in the MMRP and LDDA be prepared before any infrastructure construction began (as recommended by all the stakeholders years ago) we would not be discussing “if” we have enough power at the OAB to run the zero and near zero emission technologies. The issue related to power supply is a symptom of a bigger issue related to MMRP/LDDA implementation. As far as our discussion of low or zero emission (#2) technologies that the stakeholders have been recommending, the underlying problem is not the developers pushing back on stakeholder recommendations, it is more that the City has not required the operational mitigation programs/plans be prepared before development begins, which is inconsistent with all planning principals.

As I also mentioned, the existing stakeholder process appears to be structured more toward meeting purely procedural objectives and not to develop substantive implementation strategies to reduce air pollution from OAB development. I am interested (as are the other stakeholders) in participating in a new stakeholder process that establishes up-front a commitment from the City and the Port to develop the air quality operational programs/plans identified in the MMRP and the LDDA that haven’t been discussed to date in the current stakeholder process. That is why I recommended to you that City staff meet with the agency staff participating in the stakeholder process to discuss how and when the air quality operational programs/plans called for in the MMRP and LDDA can be prepared before new development plans are approved by the City or occupancy permits are issued to the warehouse under construction. This meeting should discuss all potential emission sources at the OAB and not just “buildings” per your email below. I am confident that all the public agency stakeholders would be interested in a meeting to discuss these issues with City and Port staff. I look forward to participating in such a meeting.

As an FYI, the April 20 and 27 dates will not work for me.

Take Care,

Dave

From: McGowan, Patricia [<mailto:PMcGowan@oaklandnet.com>]

Sent: Thursday, March 30, 2017 3:09 PM

To: David Vintze <DVintze@baaqmd.gov>

Cc: Ranelletti, Darin <DRanelletti@oaklandnet.com>; Cole, Doug <DCole@oaklandnet.com>; Monetta, John <JMonetta@oaklandnet.com>; Cappio, Claudia <CCappio@oaklandnet.com>; Pat Cashman <ptrckcshmn@gmail.com>; Wald, Mark <MWald@oaklandcityattorney.org>; Damian Breen <dbreen@baaqmd.gov>

Subject: Request for a meeting

Hi Dave,

You and I spoke in February after I received an e-mail from you stating that you were not interested in meeting in the current stakeholder process any further, or meeting with the developer or his team at all. During the phone call, I noted that your concerns could be summarized as:

1. Can the horizontal infrastructure bring enough electrical power to the OAB to power zero-emissions equipment and meet the future electrical needs at the OAB?
2. Zero emissions ideas were discussed at stakeholder meeting but the developers would push back and no real progress was made. “All we are getting are little pieces, like the construction AQ plan. We want a consistent approach for all the new building.”
3. There should be an operational AQ plan that would set performance standards for what would apply to operations at the new buildings.
4. We should meet staff to staff, outside the quarterly stakeholder meetings, to work on this.

I am working on a reply to #1; we too want to ensure that there is enough electrical power. As far as #2 and #3, we hope that the initial AQ plans we review/approve will be used as a basis for the others. #4: We recently received the Operational Air Quality Plan from Prologis for their first building referred to at CE-1, Northeast Gateway. They have not yet secured a tenant; they have prepared this operational AQ plan to give to perspective tenants outlining the tenant's obligations regarding reducing air quality impacts and energy consumption (consistent with your request).

Prologis used the two lists we received from your office and CARB in developing their Plan and I think you will be pleased to see how many of the items on the lists have been incorporated.

We would like to have a staff to staff meeting to discuss this Plan before we release it for public comment to the stakeholders. Would you be available Thursday April 20 or 27, for a 1.5 hours meeting between 1:30-4? Our team will be Darin Ranelletti, John Monetta and myself.

We will want to focus on the items on those two lists which apply to buildings, not to ships, rail nor Port operations, but rather to warehouse operations. I am sending the meeting request to you; you can decide if you feel someone from CARB should attend. I am copying Damian Breen on this because of his interest in the project. We think it would be more efficient to have Prologis at the meeting but we will take your direction on this.

Best regards,
Pat

Patricia McGowan, Environmental Coordinator | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa, Suite 3315 | Oakland, CA 94612 | Phone: (510) 238-3588 | Fax: (510) 238-6538 | Email: PMcGowan@oaklandnet.com | Website: www.oaklandnet.com/planning

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 5/15/2017 2:48:10 AM
To: Temple, Kurt [Temple.Kurt@epa.gov]; ryan.fitzpatrick@dot.gov
Subject: West Oakland T6 - two requests

Kurt and Ryan - two requests

Could you please provide an update re the status of acceptance (or not) of the April 4 complaint ? With the City proceeding with basically one more segment of the OAB mitigation plan each week, there is increasing concern on many sides as to the federal response to the complaint.

We are also hoping we can rest assured that before any correspondence or formal action goes out from either agency all of our offices will be informed.

Thanks again,

Richard

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 4/5/2017 3:41:04 PM
To: BANDROWSKI, MIKE [Bandrowski.Mike@epa.gov]
Subject: FYI: WOEIP Complaint Under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d
Attachments: 2017-04-04 WOEIP Title VI Complaint Final Format.pdf

Hi Mike. So much for my peaceful WAH day, though still hopeful. Much back and forth with seniors on 19, DOT, DHS, ARB et al just this morning, main challenge is trying to get OK to share outside the office.

Richard

From: Grow, Richard
Sent: Wednesday, April 5, 2017 7:25 AM
To: Strauss, Alexis
Cc: Jordan, Deborah; Miller, Amy; Garnett, Desean; Reyes, Deldi
Subject: Fw: WOEIP Complaint Under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d

FYI. Submitted late yesterday, came my way via DOT (Ryan). I expected something but nevertheless caught a bit by surprise and haven't read yet. It goes to DOT, EPA (Velveta) and DOJ. Ryan a bit unsettled but he and Amy (DHS) and I probably won't talk until tomorrow. Will keep you posted, likewise please if you hear anything from ECRCO. Thx

Richard

From: Rikki Weber [mailto:rweber@earthjustice.org]
Sent: Tuesday, April 04, 2017 9:11 PM
To: Daria.neal@usdoj.gov; Title_VI_Complaints@epa.gov; Fitzpatrick, Ryan (OST)
Cc: Yana Garcia; Paul Cort; Adenike Adeyeye; Rikki Weber
Subject: Re-Serving WOEIP Complaint Under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d

Counsel,

Please refer to this re-formatted copy of the previously served complaint.

Rikki Weber
Litigation Assistant
50 California Street, Suite 500
San Francisco, CA 94111
T: 415.217.2000
F: 415.217.2040

www.earthjustice.org

Earthjustice: Environmental Law: Because the Earth Needs a ...

www.earthjustice.org

Earthjustice is the premier nonprofit environmental law organization. We wield the power of law and the strength of partnership to protect people's health, to ...

The information contained in this email message may be privileged, confidential and protected from disclosure.

If you are not the intended recipient, any dissemination, distribution or copying is strictly prohibited.

If you think that you have received this email message in error, please notify the sender by reply email and delete the message and any attachments.

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 5/12/2017 3:31:45 PM
To: Marvin, Cynthia@ARB [cynthia.marvin@arb.ca.gov]; Yura, Elizabeth@ARB [eyura@arb.ca.gov]; David Vintze [DVintze@baaqmd.gov]; Alison Kirk [AKirk@baaqmd.gov]; anna.lee@acgov.org
Subject: FYI OAB: Report on first City-Agency meeting

FYI - Below is the summary of the meeting as reported to my own management. Any comments or corrections welcome.

Richard

All

Yesterday I attended the first of three meetings planned by the City of Oakland to engage relevant agencies (CARB, BAAQMD, Alameda County Public Health and EPA) on proposed air quality mitigation plans for 3 segments of the OAB. This was the first such meeting since the December 13, 2016 meeting between EPA, DOT, DHS, the City, Port and other stakeholders regarding the OAB. Last year the City attempted to hold similar meetings separately with CARB and BAAQMD, which by most accounts have been unproductive. These were also the first meetings since the April 4 filing of a Title VI complaint and since DOT's having provided technical assistance to the City and Port regarding public engagement, as requested by the City coming out of the December meetings.

Whether the meeting will prove productive remains to be seen. Discussions on mitigation measures were quite specific, with the City coming away from the meeting with several concrete recommendations from the attending agencies. The next step will be for the City to discuss those recommendations with the developer and, out of those discussions, further refine the proposed mitigation plans for these parcels of land. Once the City has what it feels is adequate plans, it will release those plans per the (currently) standard 17 day public review process after which it intends to finalize the plans.

Regarding process: Early in the meeting the City responded to the question of whether this process represents the City's response to the request made of the City and Port at the December meeting for suggestions on improving the current process to address previously noted inadequacies. The City noted that it had just recently (May 3) met with DOT on improving its processes, and stated that (1) this meeting was itself an enhancement of the previous process, in meeting with the relevant agencies before publicly releasing the plans, (2) it was in the process of developing a public engagement plan for this project and (3) it was also going to develop a plan meeting DOT's procedural requirements for compliance with Title VI. I took this to mean that this one meeting should be seen as an indicator but not a benchmark for the City's intention to improve its public engagement for the OAB redevelopment.

Regarding adequacy of air mitigation plans generally: In the context of the state/local agencies criticisms of the vagueness of several measures in these proposed plans, I reminded the City that these same four agencies had met extensively with the City and Port several years prior (2008-9) around an analogous plan – the Port's "Maritime Air Quality Improvement Plan" or MAQIP. I further described that towards the end of that process the agencies had taken a joint position, responding to the vagueness of many of the MAQIP measures, that among the key elements of a valid mitigation plan were that (1) measures should be concrete and specific, (2) have well defined timetables, (3) have clarity regarding implementing parties, and (4) be enforceable.

Several other concerns were raised by the agencies include the piecemeal nature of the review process, ongoing uncertainties regarding future uses of OAB lands, and most generally whether this process is likely to be any more productive than the past.

The next meeting is scheduled for May 18 from 1:30-3:00 in City offices. Please let me know if you would like further discussion.

Richard

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 4/5/2017 3:27:03 PM
To: Jordan, Deborah [Jordan.Deborah@epa.gov]; Quast, Sylvia [Quast.Sylvia@epa.gov]
CC: Strauss, Alexis [Strauss.Alexis@epa.gov]
Subject: Fw: OK to share complaint ?
Attachments: WOEIP Title VI Complaint 4_4_2017.pdf

Deborah and Sylvia - This Title VI complaint came in last night and there is high interest from our state/local agency partners. I'd like to share it soon but it's not clear whether that's permitted.

Richard

From: Strauss, Alexis
Sent: Wednesday, April 5, 2017 8:24 AM
To: Grow, Richard
Cc: Garnett, Desean
Subject: Re: OK to share complaint ?

Pls check with Sylvia and Deborah, as DCRO. I'm in HQ.

Sent from my iPhone

> On Apr 5, 2017, at 11:23 AM, Grow, Richard <Grow.Richard@epa.gov> wrote:
>
> Hi demand from our S/L agency partners to share the complaint. Planning to do so soon unless directed otherwise.
>
>
> Richard
> <WOEIP Title VI Complaint 4_4_2017.pdf>

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 5/11/2017 4:46:20 PM
To: Rivera, Yvette (OST) [yvette.rivera@dot.gov]
CC: Fitzpatrick, Ryan (OST) [ryan.fitzpatrick@dot.gov]
Subject: RE: OAB: Report on first City-Agency meeting

Will do, not quite as sure as I was a while back as to who wants to be in which loops, thanks for your note.

From: Rivera, Yvette (OST) [mailto:yvette.rivera@dot.gov]
Sent: Thursday, May 11, 2017 9:35 AM
To: Grow, Richard <Grow.Richard@epa.gov>
Cc: Fitzpatrick, Ryan (OST) <ryan.fitzpatrick@dot.gov>
Subject: FW: OAB: Report on first City-Agency meeting

Richard,

Hi. I hope you are well. Please copy me as well on these important emails. Many, many thanks. Yvette

Yvette Rivera, Esq.
Associate Director
Departmental Office of Civil Rights
Office of the Secretary
U.S. Department of Transportation
202.366.5131

From: Fitzpatrick, Ryan (OST)
Sent: Thursday, May 11, 2017 8:40 AM
To: Rivera, Yvette (OST); Tom, Pattie (MARAD)
Subject: FW: OAB: Report on first City-Agency meeting

FYI

Ryan N. Fitzpatrick, Esq.
Lead Civil Rights Analyst
Departmental Office of Civil Rights
Office of the Secretary
U.S. Department of Transportation
W78-312
(202) 366-1979

From: Grow, Richard [mailto:Grow.Richard@epa.gov]
Sent: Wednesday, May 10, 2017 6:29 PM
To: Fitzpatrick, Ryan (OST)
Subject: FW: OAB: Report on first City-Agency meeting

FYI

From: Grow, Richard

Sent: Wednesday, May 10, 2017 3:29 PM

To: Strauss, Alexis <Strauss.Alexis@epa.gov>

Cc: Jordan, Deborah <Jordan.Deborah@epa.gov>; Miller, Amy <Miller.Amy@epa.gov>; Adams, Elizabeth <Adams.Elizabeth@epa.gov>; Matthew Lakin <Lakin.Matthew@epa.gov>; BANDROWSKI, MIKE <Bandrowski.Mike@epa.gov>; Reyes, Deldi <Reyes.Deldi@epa.gov>; Machol, Ben <Machol.Ben@epa.gov>

Subject: OAB: Report on first City-Agency meeting

All

Yesterday I attended the first of three meetings planned by the City of Oakland to engage relevant agencies (CARB, BAAQMD, Alameda County Public Health and EPA) on proposed air quality mitigation plans for 3 segments of the OAB. This was the first such meeting since the December 13, 2016 meeting between EPA, DOT, DHS, the City, Port and other stakeholders regarding the OAB. Last year the City attempted to hold similar meetings separately with CARB and BAAQMD, which by most accounts have been unproductive. These were also the first meetings since the April 4 filing of a Title VI complaint and since DOT's having provided technical assistance to the City and Port regarding public engagement, as requested by the City coming out of the December meetings.

Whether the meeting will prove productive remains to be seen. Discussions on mitigation measures were quite specific, with the City coming away from the meeting with several concrete recommendations from the attending agencies. The next step will be for the City to discuss those recommendations with the developer and, out of those discussions, further refine the proposed mitigation plans for these parcels of land. Once the City has what it feels is adequate plans, it will release those plans per the (currently) standard 17 day public review process after which it intends to finalize the plans.

Regarding process: Early in the meeting the City responded to the question of whether this process represents the City's response to the request made of the City and Port at the December meeting for suggestions on improving the current process to address previously noted inadequacies. The City noted that it had just recently (May 3) met with DOT on improving its processes, and stated that (1) this meeting was itself an enhancement of the previous process, in meeting with the relevant agencies before publicly releasing the plans, (2) it was in the process of developing a public engagement plan for this project and (3) it was also going to develop a plan meeting DOT's procedural requirements for compliance with Title VI. I took this to mean that this one meeting should be seen as an indicator but not a benchmark for the City's intention to improve its public engagement for the OAB redevelopment.

Regarding adequacy of air mitigation plans generally: In the context of the state/local agencies criticisms of the vagueness of several measures in these proposed plans, I reminded the City that these same four agencies had met extensively with the City and Port several years prior (2008-9) around an analogous plan – the Port's "Maritime Air Quality Improvement Plan" or MAQIP. I further described that towards the end of that process the agencies had taken a joint position, responding to the vagueness of many of the MAQIP measures, that among the key elements of a valid mitigation plan were that (1) measures should be concrete and specific, (2) have well defined timetables, (3) have clarity regarding implementing parties, and (4) be enforceable.

Several other concerns were raised by the agencies include the piecemeal nature of the review process, ongoing uncertainties regarding future uses of OAB lands, and most generally whether this process is likely to be any more productive than the past.

The next meeting is scheduled for May 18 from 1:30-3:00 in City offices. Please let me know if you would like further discussion.

Richard

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 5/11/2017 2:36:59 AM
To: Margaret Gordon [margaret.woeip@gmail.com]; Brian Beveridge [brian.woeip@gmail.com]
Subject: 8:30 Monday: Meet ? EIP re OAB process: Moving forward with air quality and truck management plans

Can you be ready if I pick you up at 8:15 ? Buttercup ?

From: Margaret Gordon <margaret.woeip@gmail.com>
Sent: Wednesday, May 10, 2017 7:06 PM
To: Brian Beveridge
Cc: Grow, Richard
Subject: Re: Meet ? EIP re OAB process: Moving forward with air quality and truck management plans

Brian and Richard

Let's do breakfast Monday 8:30am and who's picking me up?

Ms.M

On Wed, May 10, 2017 at 5:19 PM, Brian Beveridge <brian.woeip@gmail.com> wrote:
I could do a breakfast meeting on Monday. 8:30 - or 9:00..
Brian

On May 10, 2017 8:12 AM, "Grow, Richard" <Grow.Richard@epa.gov> wrote:

Ms. Margaret & Brian

Yesterday was the first meeting between the City, ARB, BAAQMD, ACPH and myself regarding the upcoming AQ plan. For the City only Patricia and Darin participated, and following up on that I sent the note below to Darin. I suspect that with so many discussions going on it might be good for the three of us to catch up over breakfast. Does anything work for you next Monday, May 15th ?

Richard

From: Grow, Richard
Sent: Wednesday, May 10, 2017 8:02 AM
To: 'DRanelletti@oaklandnet.com' <DRanelletti@oaklandnet.com>

Cc: 'McGowan, Patricia' <PMcGowan@oaklandnet.com>

Subject: EIP re OAB process: Moving forward with air quality and truck management plans

Darin

Following up on yesterday's discussion, see below for the exchange between Brian Beveridge/EIP and Claudia Capiro and others regarding the process. I took this to mean that EIP was very interested in discussing the process, but that in order to proceed with that discussion they were awaiting the outcome of the DOT/City/Port discussions on May 3 and further information regarding the federal response to their Title VI complaint. Since that exchange took place on April 27, my understanding may be somewhat out of date, so if you or Patricia or others have more information, please let me know. Thanks

Richard

From: Brian Beveridge [mailto:brian.woeip@gmail.com]

Sent: Thursday, April 27, 2017 2:22 PM

To: Cappio, Claudia <CCappio@oaklandnet.com>

Cc: Margaret Gordon (margaret.woeip@gmail.com) <margaret.woeip@gmail.com>; clytle@portoakland.com; Schaaf, Libby <LSchaaf@oaklandnet.com>; jbbroadbent@baaqmd.gov; john.hummer@dot.gov; cynthia.marvin@arb.ca.gov; mdavis@portoakland.com; rsinkoff@portoakland.com; Nichols, Matthew <MDNichols@oaklandnet.com>; amy.vance@hq.dhs.gov; Strauss, Alexis <Strauss.Alexis@epa.gov>; Grow, Richard <Grow.Richard@epa.gov>; hhilken@baaqmd.gov; Ranelletti, Darin <DRanelletti@oaklandnet.com>; Bee, Maria <MBee@oaklandcityattorney.org>; McGowan, Patricia <PMcGowan@oaklandnet.com>; dprevost@portoakland.com; tleong@portoakland.com; Cole, Doug <DCole@oaklandnet.com>; Monetta, John <JMonetta@oaklandnet.com>; dchoy@portoakland.com; yvette.rivera@dot.gov; elizabeth.yura@arb.ca.gov; anna.lee@acgov.org; Lakin, Matt <Lakin.Matthew@epa.gov>; stanley.rayford@fema.dhs.gov; larreola@portoakland.com; Wald, Mark <MWald@oaklandcityattorney.org>; pcort@earthjustice.org; ryan.fitzpatrick@dot.gov; dvintze@baaqmd.gov; muntu.davis@acgov.org; sheminger@mtc.ca.gov; lisa.quiveors@hq.dhs.gov; O'Doherty, Keara S <KODoherty@oaklandnet.com>

Subject: Re: Moving forward with air quality and truck management plans

Ms. Cappio

WOEIP is eager to work with the City and Port of Oakland in a new and meaningful process to address the "significant and unavoidable" impacts projected to burden our community due to the continued development of the Port and Oakland logistics center. As we stated in our federal complaint, we hold that the City's MMRP/SCA are inadequate for the purposes of long-term planning to address the increases in emissions that are projected in the City/Port's own EIR. We feel that every day that the present development scenario continues is a day lost to the opportunity for the implementation of real and innovative projects that can bring the new logistics center into the 21st century. As we have stated, in that we have sought federal intervention to address the unproductive process that we have experienced for many years, we feel it only appropriate to allow USEPA and USDOT adequate time to review our complaint.

003696 2020-10-29

We anticipate knowing more after May 4 and will contact you after that date with recommendations for moving forward in a constructive manner. Considering your closing invitation, we do not anticipate that any process that is convened or moderated by the City will prove satisfactory to our needs.

Sincerely, Brian Beveridge

"(Community) resilience can be understood as place-based cultural practice that defines how residents survive in neighborhoods that already look broken, yet function due to existing social networks, tacit knowledge, and local histories." - Hector Fernando Burga

BRIAN BEVERIDGE, Co-Director
West Oakland Environmental Indicators Project
349 Mandela Pkwy.
Oakland, Ca. 94607
510-257-5645
WWW.WOEIP.ORG

On Thu, Apr 27, 2017 at 10:58 AM, Cappio, Claudia <CCappio@oaklandnet.com> wrote:

Greetings Ms. Gordon and Mr. Beveridge,

The City continues to be interested in working with you to improve air quality at the former Oakland Army Base (OAB) and in West Oakland, and, concurrently, achieve the economic development objectives and employment opportunities for Oakland residents envisioned in the OAB Reuse Plan. We tried to schedule a meeting with you to discuss your ideas about the process moving forward. It is disappointing that you declined this meeting request on April 7, 2017, citing your recently filed Title VI Civil Rights Complaint as the reason for not meeting.

Please understand that we are taking the Title VI Complaint seriously and will respond to it at the appropriate time and in the appropriate forum. Notwithstanding the Title VI Complaint, the City must keep reviewing submitted building-related applications, and implement the previously adopted mitigation measures in order to meet contractual obligations and provide the employment opportunities that were a part of the overall objectives of the OAB Project.

We are working on getting the truck management plan public process underway. These are important efforts and we hope that you will be involved. In addition, we will soon have draft air quality plans to review for the Prologis warehouse building (operational air quality plan) and for a container storage yard (construction and operational air quality plan). These draft plans will incorporate many of the

recommendations previously made by you and by the air quality agencies. We will continue to review these plans in accordance with the Stakeholder process outlined in the OAB Standard Conditions of Approval/Mitigation Monitoring and Reporting Program (SCA/MMRP).

The City is committed to effective implementation the SCA/MMRP and we hope you will continue to participate in that effort. We, in turn, will continue to provide you notice of the availability of any public review draft plans, review and respond to comments received about those plans and invite you to any related public meetings.

Claudia Cappio

Assistant City Administrator

City of Oakland

1 Frank Ogawa Plaza Suite 301

Oakland, CA 94612

ccappio@oaklandnet.com

510 238 6654 -- direct

510 238 7798 -- Winnie Woo, Assistant

This email communication is intended for the sole use of the intended recipient(s). Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the recipient, please contact the sender by reply email and destroy all copies of the original message and any attachments. Thank you.

--

Ms. Margaret Gordon/Co-Director
West Oakland Environmental Indicators Project
349 Mandela Parkway
Oakland, CA 94607
510-257-5647 Direct line
www.woelp.org

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 5/10/2017 10:29:23 PM
To: Fitzpatrick, Ryan (OST) [ryan.fitzpatrick@dot.gov]
Subject: FW: OAB: Report on first City-Agency meeting

FYI

From: Grow, Richard
Sent: Wednesday, May 10, 2017 3:29 PM
To: Strauss, Alexis <Strauss.Alexis@epa.gov>
Cc: Jordan, Deborah <Jordan.Deborah@epa.gov>; Miller, Amy <Miller.Amy@epa.gov>; Adams, Elizabeth <Adams.Elizabeth@epa.gov>; Matthew Lakin <Lakin.Matthew@epa.gov>; BANDROWSKI, MIKE <Bandrowski.Mike@epa.gov>; Reyes, Deldi <Reyes.Deldi@epa.gov>; Machol, Ben <Machol.Ben@epa.gov>
Subject: OAB: Report on first City-Agency meeting

All

Yesterday I attended the first of three meetings planned by the City of Oakland to engage relevant agencies (CARB, BAAQMD, Alameda County Public Health and EPA) on proposed air quality mitigation plans for 3 segments of the OAB. This was the first such meeting since the December 13, 2016 meeting between EPA, DOT, DHS, the City, Port and other stakeholders regarding the OAB. Last year the City attempted to hold similar meetings separately with CARB and BAAQMD, which by most accounts have been unproductive. These were also the first meetings since the April 4 filing of a Title VI complaint and since DOT's having provided technical assistance to the City and Port regarding public engagement, as requested by the City coming out of the December meetings.

Whether the meeting will prove productive remains to be seen. Discussions on mitigation measures were quite specific, with the City coming away from the meeting with several concrete recommendations from the attending agencies. The next step will be for the City to discuss those recommendations with the developer and, out of those discussions, further refine the proposed mitigation plans for these parcels of land. Once the City has what it feels is adequate plans, it will release those plans per the (currently) standard 17 day public review process after which it intends to finalize the plans.

Regarding process: Early in the meeting the City responded to the question of whether this process represents the City's response to the request made of the City and Port at the December meeting for suggestions on improving the current process to address previously noted inadequacies. The City noted that it had just recently (May 3) met with DOT on improving its processes, and stated that (1) this meeting was itself an enhancement of the previous process, in meeting with the relevant agencies before publicly releasing the plans, (2) it was in the process of developing a public engagement plan for this project and (3) it was also going to develop a plan meeting DOT's procedural requirements for compliance with Title VI. I took this to mean that this one meeting should be seen as an indicator but not a benchmark for the City's intention to improve its public engagement for the OAB redevelopment.

Regarding adequacy of air mitigation plans generally: In the context of the state/local agencies criticisms of the vagueness of several measures in these proposed plans, I reminded the City that these same four agencies had met extensively with the City and Port several years prior (2008-9) around an analogous plan – the Port's "Maritime Air Quality Improvement Plan" or MAQIP. I further described that towards the end of that process the agencies had taken a joint position, responding to the vagueness of many of the MAQIP measures, that among the key elements of a valid mitigation plan were that (1) measures should be concrete and specific, (2) have well defined timetables, (3) have clarity regarding implementing parties, and (4) be enforceable.

Several other concerns were raised by the agencies include the piecemeal nature of the review process, ongoing uncertainties regarding future uses of OAB lands, and most generally whether this process is likely to be any more productive than the past.

The next meeting is scheduled for May 18 from 1:30-3:00 in City offices. Please let me know if you would like further discussion.

Richard

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 5/10/2017 10:29:01 PM
To: Strauss, Alexis [Strauss.Alexis@epa.gov]
CC: Jordan, Deborah [Jordan.Deborah@epa.gov]; Miller, Amy [Miller.Amy@epa.gov]; Adams, Elizabeth [Adams.Elizabeth@epa.gov]; Matthew Lakin [Lakin.Matthew@epa.gov]; BANDROWSKI, MIKE [Bandrowski.Mike@epa.gov]; Reyes, Deldi [Reyes.Deldi@epa.gov]; Machol, Ben [Machol.Ben@epa.gov]
Subject: OAB: Report on first City-Agency meeting

All

Yesterday I attended the first of three meetings planned by the City of Oakland to engage relevant agencies (CARB, BAAQMD, Alameda County Public Health and EPA) on proposed air quality mitigation plans for 3 segments of the OAB. This was the first such meeting since the December 13, 2016 meeting between EPA, DOT, DHS, the City, Port and other stakeholders regarding the OAB. Last year the City attempted to hold similar meetings separately with CARB and BAAQMD, which by most accounts have been unproductive. These were also the first meetings since the April 4 filing of a Title VI complaint and since DOT's having provided technical assistance to the City and Port regarding public engagement, as requested by the City coming out of the December meetings.

Whether the meeting will prove productive remains to be seen. Discussions on mitigation measures were quite specific, with the City coming away from the meeting with several concrete recommendations from the attending agencies. The next step will be for the City to discuss those recommendations with the developer and, out of those discussions, further refine the proposed mitigation plans for these parcels of land. Once the City has what it feels is adequate plans, it will release those plans per the (currently) standard 17 day public review process after which it intends to finalize the plans.

Regarding process: Early in the meeting the City responded to the question of whether this process represents the City's response to the request made of the City and Port at the December meeting for suggestions on improving the current process to address previously noted inadequacies. The City noted that it had just recently (May 3) met with DOT on improving its processes, and stated that (1) this meeting was itself an enhancement of the previous process, in meeting with the relevant agencies before publicly releasing the plans, (2) it was in the process of developing a public engagement plan for this project and (3) it was also going to develop a plan meeting DOT's procedural requirements for compliance with Title VI. I took this to mean that this one meeting should be seen as an indicator but not a benchmark for the City's intention to improve its public engagement for the OAB redevelopment.

Regarding adequacy of air mitigation plans generally: In the context of the state/local agencies criticisms of the vagueness of several measures in these proposed plans, I reminded the City that these same four agencies had met extensively with the City and Port several years prior (2008-9) around an analogous plan – the Port's "Maritime Air Quality Improvement Plan" or MAQIP. I further described that towards the end of that process the agencies had taken a joint position, responding to the vagueness of many of the MAQIP measures, that among the key elements of a valid mitigation plan were that (1) measures should be concrete and specific, (2) have well defined timetables, (3) have clarity regarding implementing parties, and (4) be enforceable.

Several other concerns were raised by the agencies include the piecemeal nature of the review process, ongoing uncertainties regarding future uses of OAB lands, and most generally whether this process is likely to be any more productive than the past.

The next meeting is scheduled for May 18 from 1:30-3:00 in City offices. Please let me know if you would like further discussion.

Richard

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 5/10/2017 4:00:40 PM
To: Reyes, Deldi [Reyes.Deldi@epa.gov]
CC: Stewart, Kathleen [stewart.kathleen@epa.gov]
Subject: Hey: more re RECLAIM

Hi, have to admit after yesterday's discussion (had to call in after getting out of City/Oakland mtg on OAB) I'm lost as to where/what is wanted under RECLAIM topic. Could barely hear Amy Z, understand you were impressed with what she was saying, and frankly anything regarding EJ I say in her presence generally elicits her corrections/frowns in reaction to my poorly thought out remarks, so I'm guessing nevermind trying to tie RECLAIM into C&T and EJ.

Not all that clear on level of detail etc wanted under T6/EJ either, maybe chat sometime beforehand ?

From: Reyes, Deldi
Sent: Wednesday, May 10, 2017 8:51 AM
To: BANDROWSKI, MIKE <Bandrowski.Mike@epa.gov>; Stewart, Kathleen <Stewart.Kathleen@epa.gov>
Cc: Grow, Richard <Grow.Richard@epa.gov>
Subject: more re RECLAIM

Hey there - see below from Ken.

Anyone you would like to have in the room is certainly great with me. So, feel free to invite others.

From: Israels, Ken
Sent: Wednesday, May 10, 2017 5:11 AM
To: Reyes, Deldi <Reyes.Deldi@epa.gov>; Mays, Rory <Mays.Rory@epa.gov>
Cc: Grow, Richard <Grow.Richard@epa.gov>
Subject: RE: draft agenda for session with Veronica Eady

Hi –

On RECLAIM, it may be best to consult or otherwise involve Laura Yannayon or Nicole Law in the Rules office to cover. Assuming that the discussion may focus on upcoming changes, including sunseting the program, Laura and Nicole probably have the most up to date information.

Ken

From: Reyes, Deldi
Sent: Tuesday, May 9, 2017 9:38 AM
To: Mays, Rory <Mays.Rory@epa.gov>
Cc: Israels, Ken <Israels.Ken@epa.gov>; Grow, Richard <Grow.Richard@epa.gov>
Subject: Re: draft agenda for session with Veronica Eady

Richard?

Sent from my iPhone

On May 9, 2017, at 9:26 AM, Mays, Rory <Mays.Rory@epa.gov> wrote:

Hi Deldi,

Looks like a good agenda. Looking forward to it. However, I can't really speak to RECLAIM. I know the rough sketches of its purpose and changes over time, but would defer to others to cover this. Maybe Ken or someone in our Rules office could speak to this?

Rory

Rory M. Mays
Air Planning Office, Region 9, San Francisco
U.S. Environmental Protection Agency
mays.rory@epa.gov, 415-972-3227

From: Reyes, Deldi
Sent: Monday, May 08, 2017 5:20 PM
To: Grow, Richard <Grow.Richard@epa.gov>; Israels, Ken <Israels.Ken@epa.gov>; Mays, Rory <Mays.Rory@epa.gov>; Pathak, Priyanka <Pathak.Priyanka@epa.gov>; Vallano, Dena <Vallano.Dena@epa.gov>; Donez, Francisco <Donez.Francisco@epa.gov>; Stewart, Kathleen <Stewart.Kathleen@epa.gov>; Salazar, Matt <Salazar.Matt@epa.gov>; Zabel, Allan <Zabel.Allan@epa.gov>
Cc: BANDROWSKI, MIKE <Bandrowski.Mike@epa.gov>
Subject: draft agenda for session with Veronica Eady

Colleagues, per Katie, you have all accepted (some tentative) the invite for our session this Thursday with ARB's Veronica Eady. I have added a couple of other folks and I'll make sure you get the invite. If you're not able to make it, please let me and Katie know. Please see below for the draft agenda. It would be good to know that Mike and I can count on you to help lead the discussion for some of our topics. No need to have a presentation, just be ready to share what seems most relevant re EPA's involvement with the issue based on Veronica's interest / questions. It's unlikely we'll get through all the topics so consider this a starting point. We will have back and forth with Veronica on these topics. For example, at a minimum, re items 3 and 7, she may be updating us as well, so don't feel like you will be on the hook to fill all the air time ;) I will facilitate.

Based on our brainstorming of over a few weeks ago, I've added your names where it seemed to make sense. If I got any of that wrong, please let me know ASAP. Thanks

DRAFT AGENDA

May 11, 2017 Meet and Greet with . . .

- **Veronica Eady**, Assistant Executive Officer for Environmental Justice and
- **Kevin Olp**, CalEPA Coordinator for EJ Task Force Initiative

2:00 Introductions

- ARB – Inaugural Executive Officer EJ Position, Veronica Eady
- CalEPA – EJ Enforcement Initiative, Kevin Olp
- Region 9 Air Division and Air Enforcement Managers
- Staff of Air Toxics, EJ and Community Team

2:20 Vision for ARB Senior Executive Officer EJ Position

2:30 Overview of EPA Region 9's Air / Enforcement Divisions

2:45 - 3:30 Discussion Topics

1. Title VI (Richard)
 - a. ARB-relevant complaints (Richard, Ken I.)
 - b. Region 9 EJ / Title VI approach (Richard)
2. RECLAIM (Rory / Ken I.)
3. Community air monitoring (Priyanka, Dena)
4. Moving Forward Network/Goods movement (Richard, Francisco)
5. Toxic hotspots
6. Near roadway impacts (Katie)
7. SEPs (Matt, Alan)

RUN—DON'T WALK

Deldi Reyes | U.S. Environmental Protection Agency | Region 9 | Enforcement Division | Tel
415.972.3795 | reyes.deldi@epa.gov

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 5/10/2017 3:12:18 PM
To: Brian Beveridge [brian.woeip@gmail.com]; Margaret Gordon [margaret.woeip@gmail.com]
Subject: Meet ? EIP re OAB process: Moving forward with air quality and truck management plans

Ms. Margaret & Brian

Yesterday was the first meeting between the City, ARB, BAAQMD, ACPH and myself regarding the upcoming AQ plan. For the City only Patricia and Darin participated, and following up on that I sent the note below to Darin. I suspect that with so many discussions going on it might be good for the three of us to catch up over breakfast. Does anything work for you next Monday, May 15th ?

Richard

From: Grow, Richard
Sent: Wednesday, May 10, 2017 8:02 AM
To: 'DRanelletti@oaklandnet.com' <DRanelletti@oaklandnet.com>
Cc: 'McGowan, Patricia' <PMcGowan@oaklandnet.com>
Subject: EIP re OAB process: Moving forward with air quality and truck management plans

Darin

Following up on yesterday's discussion, see below for the exchange between Brian Beveridge/EIP and Claudia Cappio and others regarding the process. I took this to mean that EIP was very interested in discussing the process, but that in order to proceed with that discussion they were awaiting the outcome of the DOT/City/Port discussions on May 3 and further information regarding the federal response to their Title VI complaint. Since that exchange took place on April 27, my understanding may be somewhat out of date, so if you or Patricia or others have more information, please let me know. Thanks

Richard

From: Brian Beveridge [<mailto:brian.woeip@gmail.com>]
Sent: Thursday, April 27, 2017 2:22 PM
To: Cappio, Claudia <CCappio@oaklandnet.com>
Cc: Margaret Gordon (margaret.woeip@gmail.com) <margaret.woeip@gmail.com>; clytle@portoakland.com; Schaaf, Libby <LSchaaf@oaklandnet.com>; jlbroadbent@baaqmd.gov; john.hummer@dot.gov; cynthia.marvin@arb.ca.gov; mdavis@portoakland.com; rsinkoff@portoakland.com; Nichols, Matthew <MDNichols@oaklandnet.com>; amy.vance@hq.dhs.gov; Strauss, Alexis <Strauss.Alexis@epa.gov>; Grow, Richard <Grow.Richard@epa.gov>; hhilken@baaqmd.gov; Ranelletti, Darin <DRanelletti@oaklandnet.com>; Bee, Maria <MBee@oaklandcityattorney.org>; McGowan, Patricia <PMcGowan@oaklandnet.com>; dprevost@portoakland.com; tleong@portoakland.com; Cole, Doug <DCole@oaklandnet.com>; Monetta, John <JMonetta@oaklandnet.com>; dchoy@portoakland.com; yvette.rivera@dot.gov; elizabeth.yura@arb.ca.gov; anna.lee@acgov.org; Lakin, Matt <Lakin.Matthew@epa.gov>; stanley.rayford@fema.dhs.gov; larreola@portoakland.com; Wald, Mark <MWald@oaklandcityattorney.org>; pcort@earthjustice.org; ryan.fitzpatrick@dot.gov; dvintze@baaqmd.gov; muntu.davis@acgov.org; sheminger@mtc.ca.gov; lisa.quiveors@hq.dhs.gov; O'Doherty, Keara S <KODoherty@oaklandnet.com>
Subject: Re: Moving forward with air quality and truck management plans

Ms. Cappio

WOEIP is eager to work with the City and Port of Oakland in a new and meaningful process to address the "significant and unavoidable" impacts projected to burden our community due to the continued development of the Port and Oakland logistics center. As we stated in our federal complaint, we hold that the City's MMRP/SCA are inadequate for the purposes of long-term planning to address the increases in emissions that are projected in the City/Port's own EIR. We feel that every day that the present development scenario continues is a day lost to the opportunity for the implementation of real and innovative projects that can bring the new logistics center into the 21st century. As we have stated, in that we have sought federal intervention to address the unproductive process that we have experienced for many years, we feel it only appropriate to allow USEPA and USDOT adequate time to review our complaint. We anticipate knowing more after May 4 and will contact you after that date with recommendations for moving forward in a constructive manner. Considering your closing invitation, we do not anticipate that any process that is convened or moderated by the City will prove satisfactory to our needs.

Sincerely, Brian Beveridge

"(Community) resilience can be understood as place-based cultural practice that defines how residents survive in neighborhoods that already look broken, yet function due to existing social networks, tacit knowledge, and local histories." - Hector Fernando Burga

BRIAN BEVERIDGE, Co-Director
West Oakland Environmental Indicators Project
349 Mandela Pkwy.
Oakland, Ca. 94607
510-257-5645
WWW.WOEIP.ORG

On Thu, Apr 27, 2017 at 10:58 AM, Cappio, Claudia <CCappio@oaklandnet.com> wrote:

Greetings Ms. Gordon and Mr. Beveridge,

The City continues to be interested in working with you to improve air quality at the former Oakland Army Base (OAB) and in West Oakland, and, concurrently, achieve the economic development objectives and employment opportunities for Oakland residents envisioned in the OAB Reuse Plan. We tried to schedule a meeting with you to discuss your ideas about the process moving forward. It is disappointing that you declined this meeting request on April 7, 2017, citing your recently filed Title VI Civil Rights Complaint as the reason for not meeting.

Please understand that we are taking the Title VI Complaint seriously and will respond to it at the appropriate time and in the appropriate forum. Notwithstanding the Title VI Complaint, the City must keep reviewing submitted building-related applications, and implement the previously adopted mitigation measures in order to meet contractual obligations and provide the employment opportunities that were a part of the overall objectives of the OAB Project.

We are working on getting the truck management plan public process underway. These are important efforts and we hope that you will be involved. In addition, we will soon have draft air quality plans to review for the Prologis warehouse building (operational air quality plan) and for a container storage yard (construction and operational air quality plan). These draft plans will incorporate many of the recommendations previously made

by you and by the air quality agencies. We will continue to review these plans in accordance with the Stakeholder process outlined in the OAB Standard Conditions of Approval/Mitigation Monitoring and Reporting Program (SCA/MMRP).

The City is committed to effective implementation the SCA/MMRP and we hope you will continue to participate in that effort. We, in turn, will continue to provide you notice of the availability of any public review draft plans, review and respond to comments received about those plans and invite you to any related public meetings.

Claudia Cappio

Assistant City Administrator

City of Oakland

1 Frank Ogawa Plaza Suite 301

Oakland, CA 94612

ccappio@oaklandnet.com

510 238 6654 -- direct

510 238 7798 -- Winnie Woo, Assistant

This email communication is intended for the sole use of the intended recipient(s). Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the recipient, please contact the sender by reply email and destroy all copies of the original message and any attachments. Thank you.

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 5/10/2017 3:02:39 PM
To: DRanelletti@oaklandnet.com
CC: McGowan, Patricia [PMcGowan@oaklandnet.com]
Subject: EIP re OAB process: Moving forward with air quality and truck management plans

Darin

Following up on yesterday's discussion, see below for the exchange between Brian Beveridge/EIP and Claudia Cappio and others regarding the process. I took this to mean that EIP was very interested in discussing the process, but that in order to proceed with that discussion they were awaiting the outcome of the DOT/City/Port discussions on May 3 and further information regarding the federal response to their Title VI complaint. Since that exchange took place on April 27, my understanding may be somewhat out of date, so if you or Patricia or others have more information, please let me know. Thanks

Richard

From: Brian Beveridge [mailto:brian.woeip@gmail.com]
Sent: Thursday, April 27, 2017 2:22 PM
To: Cappio, Claudia <CCappio@oaklandnet.com>
Cc: Margaret Gordon (margaret.woeip@gmail.com) <margaret.woeip@gmail.com>; clytle@portoakland.com; Schaaf, Libby <LSchaaf@oaklandnet.com>; jbbroadbent@baaqmd.gov; john.hummer@dot.gov; cynthia.marvin@arb.ca.gov; mdavis@portoakland.com; rsinkoff@portoakland.com; Nichols, Matthew <MDNichols@oaklandnet.com>; amy.vance@hq.dhs.gov; Strauss, Alexis <Strauss.Alexis@epa.gov>; Grow, Richard <Grow.Richard@epa.gov>; hhilken@baaqmd.gov; Ranelletti, Darin <DRanelletti@oaklandnet.com>; Bee, Maria <MBee@oaklandcityattorney.org>; McGowan, Patricia <PMcGowan@oaklandnet.com>; dprevost@portoakland.com; tleong@portoakland.com; Cole, Doug <DCole@oaklandnet.com>; Monetta, John <JMonetta@oaklandnet.com>; dchoy@portoakland.com; yvette.rivera@dot.gov; elizabeth.yura@arb.ca.gov; anna.lee@acgov.org; Lakin, Matt <Lakin.Matthew@epa.gov>; stanley.rayford@fema.dhs.gov; larreola@portoakland.com; Wald, Mark <MWald@oaklandcityattorney.org>; pcort@earthjustice.org; ryan.fitzpatrick@dot.gov; dvintze@baaqmd.gov; muntu.davis@acgov.org; sheminger@mtc.ca.gov; lisa.quiveors@hq.dhs.gov; O'Doherty, Keara S <KODoherty@oaklandnet.com>
Subject: Re: Moving forward with air quality and truck management plans

Ms. Cappio

WOEIP is eager to work with the City and Port of Oakland in a new and meaningful process to address the "significant and unavoidable" impacts projected to burden our community due to the continued development of the Port and Oakland logistics center. As we stated in our federal complaint, we hold that the City's MMRP/SCA are inadequate for the purposes of long-term planning to address the increases in emissions that are projected in the City/Port's own EIR. We feel that every day that the present development scenario continues is a day lost to the opportunity for the implementation of real and innovative projects that can bring the new logistics center into the 21st century. As we have stated, in that we have sought federal intervention to address the unproductive process that we have experienced for many years, we feel it only appropriate to allow USEPA and USDOT adequate time to review our complaint. We anticipate knowing more after May 4 and will contact you after that date with recommendations for moving forward in a constructive manner. Considering your closing invitation, we do not anticipate that any process that is convened or moderated by the City will prove satisfactory to our needs.

Sincerely, Brian Beveridge

"(Community) resilience can be understood as place-based cultural practice that defines how residents survive in neighborhoods that already look broken, yet function due to existing social networks, tacit knowledge, and local histories." - Hector Fernando Burga

BRIAN BEVERIDGE, Co-Director
West Oakland Environmental Indicators Project
349 Mandela Pkwy.
Oakland, Ca. 94607
510-257-5645
WWW.WOEIP.ORG

On Thu, Apr 27, 2017 at 10:58 AM, Cappio, Claudia <CCappio@oaklandnet.com> wrote:

Greetings Ms. Gordon and Mr. Beveridge,

The City continues to be interested in working with you to improve air quality at the former Oakland Army Base (OAB) and in West Oakland, and, concurrently, achieve the economic development objectives and employment opportunities for Oakland residents envisioned in the OAB Reuse Plan. We tried to schedule a meeting with you to discuss your ideas about the process moving forward. It is disappointing that you declined this meeting request on April 7, 2017, citing your recently filed Title VI Civil Rights Complaint as the reason for not meeting.

Please understand that we are taking the Title VI Complaint seriously and will respond to it at the appropriate time and in the appropriate forum. Notwithstanding the Title VI Complaint, the City must keep reviewing submitted building-related applications, and implement the previously adopted mitigation measures in order to meet contractual obligations and provide the employment opportunities that were a part of the overall objectives of the OAB Project.

We are working on getting the truck management plan public process underway. These are important efforts and we hope that you will be involved. In addition, we will soon have draft air quality plans to review for the Prologis warehouse building (operational air quality plan) and for a container storage yard (construction and operational air quality plan). These draft plans will incorporate many of the recommendations previously made by you and by the air quality agencies. We will continue to review these plans in accordance with the Stakeholder process outlined in the OAB Standard Conditions of Approval/Mitigation Monitoring and Reporting Program (SCA/MMRP).

The City is committed to effective implementation the SCA/MMRP and we hope you will continue to participate in that effort. We, in turn, will continue to provide you notice of the availability of any public review draft plans, review and respond to comments received about those plans and invite you to any related public meetings.

Claudia Cappio

Assistant City Administrator

City of Oakland

1 Frank Ogawa Plaza Suite 301

Oakland, CA 94612

ccappio@oaklandnet.com

510 238 6654 -- direct

510 238 7798 -- Winnie Woo, Assistant

This email communication is intended for the sole use of the intended recipient(s). Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the recipient, please contact the sender by reply email and destroy all copies of the original message and any attachments. Thank you.

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 5/9/2017 8:50:03 PM
To: Alison Kirk [AKirk@baaqmd.gov]
Subject: Fw: Review of AQ plans for Prologis development at the OAB
Attachments: March 2017addendum17-7.pdf

From: Morris, Robbie@ARB <robbie.morris@arb.ca.gov>
Sent: Tuesday, May 9, 2017 12:02 PM
To: McGowan, Patricia; Ranelletti, Darin; Monetta, John; David Vintze; Yura, Elizabeth@ARB; Boyd, Rich@ARB
Cc: Grow, Richard; Anna Lee (anna.lee@acgov.org)
Subject: RE: Review of AQ plans for Prologis development at the OAB

Good afternoon,

Attached is the Board Resolution from March 2017 mentioned in today's meeting. Thank Robbie

From: McGowan, Patricia [PMcGowan@oaklandnet.com]
Sent: Tuesday, May 02, 2017 10:45 AM
Required: McGowan, Patricia; Morris, Robbie@ARB; Ranelletti, Darin; Monetta, John; David Vintze; Yura, Elizabeth@ARB; Boyd, Rich@ARB
Optional: Richard Grow (grow.richard@epa.gov); Anna Lee (anna.lee@acgov.org)
Subject: FW: Review of AQ plans for Prologis development at the OAB
When: Tuesday, May 09, 2017 11:00 AM-12:30 PM.
Where: ConfRoom - Acorn

-----Original Appointment-----

From: McGowan, Patricia [mailto:PMcGowan@oaklandnet.com]
Sent: Thursday, April 20, 2017 3:46 PM
To: McGowan, Patricia; Ranelletti, Darin; Monetta, John; David Vintze; Yura, Elizabeth@ARB
Cc: Richard Grow (grow.richard@epa.gov); Anna Lee (anna.lee@acgov.org)
Subject: Review of AQ plans for Prologis development at the OAB
When: Tuesday, May 09, 2017 11:00 AM-12:30 PM (UTC-08:00) Pacific Time (US & Canada).
Where: ConfRoom - Acorn

Hello,

Per my email of April 19, I am sending you the following meeting request, along with two other such requests.

The meetings will be held at the City of Oakland Bureau of Planning office, 250 Frank H. Ogawa Plaza, Suite 3315, Acorn conference room.

Patricia McGowan
510-238-3588

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 5/6/2017 3:28:50 PM
To: Brian Beveridge [brian.woeip@gmail.com]; Margaret Gordon [margaret.woeip@gmail.com]
Subject: Fw: OAB & "plan" basics, next week's meeting
Attachments: MAQIP IAG recs final 4 page document.pdf; MAQIP IAG recs 11-19-08 cover letter.pdf

Ms. Margaret, Brian - pls treat this as an FYI and do not attempt to make use of it to create public dialog. This is an "educational" piece and I am hoping we can obtain some broad agreement on the basic elements of what constitutes a valid "plan."

I will be sitting in on the first of the City's meetings on 5/9 with the agencies to discuss the next piece of mitigation planning. Meanwhile DOT has come and gone, providing "technical assistance" to the City and Port on public involvement. We did not participate in those meetings nor do I know much about them other than they were "well attended." I am hoping the city's meeting with the agencies next week will provide some indication of where the City and Port see the process headed, but at this point this is a complete blank to me.

Final note: If you read the attached documents and the clearly stated objections the agencies had to the MAQIP, you may understand why I flinch whenever the "MAQIP" is cited as a good example of something. Viveka conducted a formal evaluation of the MAQIP process in which the agencies were quite vocal about the deficiencies on the process.

Richard

From: Grow, Richard
Sent: Saturday, May 6, 2017 8:17 AM
To: Marvin, Cynthia@ARB; Yura, Elizabeth@ARB; David Vintze; Alison Kirk; anna.lee@acgov.org
Subject: OAB & "plan" basics, next week's meeting

All

Heading into next week's meeting with the City on the mitigation plan for the OAB, I am circulating a couple historical documents from a time several years ago when many of us were struggling over the adequacy of another plan. These go to the question of "**what is a plan ?**". At the time many were frustrated with the vagueness of many elements of the MAQIP. On 11/19/08 all of our respective agencies (ARB, BAAQMD, ACPHD, EPA) co-signed a letter objecting to that vagueness, insisting on "*concrete actions*" with "*specific timelines*" and attached a document with concrete recommendations including "*timelines*" and identification of "*responsible parties*." BAAQMD followed up with a separate letter on December 5 and the BAAQMD Board adopted a resolution along those same lines. In the world of State Implementation Plans (SIP) in which several of us (ARB, BAAQMD, EPA) have been engaged for decades, there is also a requirement for clarity regarding "*enforceability*."

I'm circulating these hoping we can attain some clarity as to what constitutes a meaningful plan. Documents attached. Please let me know if you would like to talk before the Tuesday meeting.

Richard

November 19, 2008

Omar Benjamin, Executive Director
Maritime Committee
Port of Oakland
530 Water Street
Oakland, CA 94607

Dear Director Benjamin and Port of Oakland Maritime Committee:

The members of the Maritime Air Quality Improvement Plan (MAQIP) Interagency Group are pleased to submit to you the attached document, entitled, "Proposed Near-Term Implementation Plan".

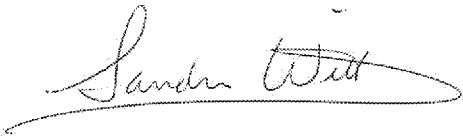
We would like to take the opportunity to congratulate the Port Board of Commissioners for establishing a goal of 85% reduction in health risks by 2020. We appreciate that the Port created a multi-stakeholder task force to assist with the development of the MAQIP and the revised version of the MAQIP reflects many recommendations that the taskforce members contributed.

Our Interagency group feels it is very important for the Port Commission to take some additional concrete steps to make the MAQIP a plan that clearly demonstrates the Port's strong commitment to improving air quality and the health of Oakland residents who live near the Port. The attached document outlines concrete actions and specific timelines that the Port can take to reduce or eliminate negative health impacts. These are actions that we believe are critical to ensuring the MAQIP attains its stated goals. The Interagency Group would like the Near-Term Implementation Plan to accompany the MAQIP. It is our hope that this proposal will be discussed during the Port's Maritime Committee meeting, scheduled for November 20, 2008 and as a result, moved forward to the full Board for review, discussion and approval.

The Interagency group of the MAQIP is comprised of representatives from California Air Resources Board, Bay Area Air Quality Management District, Environmental Protection Agency, City of Oakland, Alameda County Public Health Department, Alameda County Environmental Health Department, Alameda County Board of Supervisors, and the Port of Oakland. If you

should have any questions concerning our proposal please contact Dr.
Sandra Witt (Alameda County Public Health Department) at 510-267-8018.

Sincerely,

A handwritten signature in cursive script that reads "Sandra Witt". The signature is written in dark ink and has a fluid, connected style.

Sandra Witt
Alameda County Public Health Department

Cynthia Marvin
California Air Resources Board

Jean Roggenkamp
Bay Area Air Quality Management District

Amy Zimpfer
US Environmental Protection Agency

Supervisor Keith Carson
Alameda County Board of Supervisors

Supervisor Nate Miley
Alameda County Board of Supervisors

Pamela Evans
Alameda County Environmental Health

Proposed Near-Term Implementation Plan for
PORT OF OAKLAND MARITIME AIR QUALITY IMPROVEMENT PLAN

Summary of Concrete Actions to be Taken by the Port
to Help Reduce the Health Risk from Diesel Particulate Matter from Seaport Sources 85% by 2020

The MAQIP (Table 9-3) includes an expansive list of primary and secondary air quality initiatives to cut emissions and health risk, increase efficiency, and reduce community impacts. These initiatives rely on possible future actions by the Port and its partners (including other agencies and the Port's tenants and customers) to successfully implement them.

The Port of Oakland is demonstrating its leadership and commitment to the MAQIP by itemizing the concrete actions the Commission and staff will take to expedite the Port's own emission control measures (Table 8-2) in several key areas. The most significant actions the Port can take in the near-term to achieve the goals of the MAQIP are: (1) to establish a source of continued funding for early action incentives, (2) to transition the fleet of port drayage trucks to much cleaner models by the end of 2009, and (3) to embrace and promote the use of shore-based power for ships at dock. Longer-term, the Port will also vigorously pursue efficiency improvements that can provide concurrent economic and environmental benefits. Accomplishing these major tasks in a timely fashion will build public confidence in the effectiveness of the MAQIP and the Port's ability to deliver on its promises.

OBJECTIVES AND PORT ACTIONS	RESPONSIBLE ENTITY	TIMEFRAME FOR ACTION
Near-Term Objective: Generate substantial new funding for incentives to accelerate pollution reduction programs		
• Adopt a user fee of \$12.50/TEU (\$25/container)	Commission	December 2008
• Establish Port policy to dedicate at least the first 3 years of fee revenue to air quality projects to reduce the existing health risk (for port trucks, for shore power and other projects)	Commission	December 2008 – March 2009
• Begin collection of fee	Staff	October 2009

MAQIP Interagency Proposed Near-term Implementation Plan for Discussion at 11/20/08 Maritime Committee

OBJECTIVES AND PORT ACTIONS	RESPONSIBLE ENTITY	TIMEFRAME FOR ACTION
Near-Term Objective: Quickly clean up the fleet of 2,000 diesel trucks that frequently serve the Port to cut pollution in West Oakland and neighboring communities		
<ul style="list-style-type: none"> Establish Port policy to move the clean truck strategy ahead of the pending comprehensive truck management plan to support compliance with the 2009 deadline in the Air Resources Board's (ARB) rule, ensure trucks are available to legally carry cargo to and from the Port without disruption, and maximize the Proposition 1B funding available for this purpose 	Commission	December 2008
<ul style="list-style-type: none"> Amend the existing Memorandum of Understanding (MOU) with the Bay Area Air Quality Management District (District) to allow the Port's \$5 million in committed funds to be used for truck replacements after demand for retrofits is exhausted 	Commission BAAQMD	December 2008 - January 2009
<ul style="list-style-type: none"> Develop and implement a financing mechanism to leverage the first 3 years of user fee revenues to make the funds available in 2009 for clean truck projects 	Commission Staff	December 2008 January - June 2009
<ul style="list-style-type: none"> Develop an expanded MOU with the District to provide advance funds in 2009 from the user fees to leverage new commitments in 2009 in State, District and regional funding for cleaner trucks 	Commission Staff BAAQMD	December 2008 January-February 2009
<ul style="list-style-type: none"> Negotiate and establish bulk purchase prices for new trucks (like the Ports of Los Angeles and Long Beach) 	Commission City Staff	January 2009 February – June 2009
<ul style="list-style-type: none"> Consider amendments to Prop 1B Guidelines to allow truckers who get retrofit funds to also apply for replacement funds 	ARB	January 2009
Interagency group will pursue other sources of funding for the clean truck strategy including but not limited to economic development grants, economic stimulus funds, Transportation, West Coast Collaborative, small business grants and loans, and others.	Interagency group	December 2008-February 2009

OBJECTIVES AND PORT ACTIONS	RESPONSIBLE ENTITY	TIMEFRAME FOR ACTION
Near-Term Objective: Take the leadership role in bringing shore-based power to all cargo ship berths to dramatically cut ship pollution at dock		
<ul style="list-style-type: none"> Establish a Port policy to promote and enable the use of shore power at all cargo ship berths to comply with ARB's rule to reduce emissions from ships at dock 	Commission	December 2008 – January 2009
<ul style="list-style-type: none"> Provide staff report to the public and the Commission on proposed funding sources for shore-side infrastructure, including State monies (directly or through the District), a tariff on the terminal operators, lease requirements, and/or other means 	Staff	January – May 2009
<ul style="list-style-type: none"> Work with marine terminal operators, carriers, Pacific Gas and Electric and others to design a plan for installation of shore power at marine terminals and modification of ships to accept that power (compliance plans are due to ARB by July 2009 under State regulation). 	Staff	January – June 2009
<ul style="list-style-type: none"> Develop an incentive-based program to increase the usage of low-sulfur marine fuels in ocean-going vessels that visit the Port. The incentives will target fuels with sulfur content below the level required by ARB's regulation. Establish a Port policy to implement the fuel incentive program if the California Air Resources Board's fuel regulation for ocean-going vessels is rescinded, overturned or otherwise not enforced. 	Commission, Staff Shipping Lines	January – June 2009 for program development

OBJECTIVES AND PORT ACTIONS	RESPONSIBLE ENTITY	TIMEFRAME FOR ACTION
Mid-Term Objective: Increase operational efficiency to reduce emissions of air pollutants and support Port growth		
<ul style="list-style-type: none"> • Provide staff report to the public and the Commission on recommended Port strategies to increase efficiency at sea, on Port property, and along transportation corridors 	Staff	Mid-2010

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 5/6/2017 3:17:42 PM
To: Marvin, Cynthia@ARB [cynthia.marvin@arb.ca.gov]; Yura, Elizabeth@ARB [eyura@arb.ca.gov]; David Vintze [DVintze@baaqmd.gov]; Alison Kirk [AKirk@baaqmd.gov]; anna.lee@acgov.org
Subject: OAB & "plan" basics, next week's meeting
Attachments: MAQIP IAG recs final 4 page document.pdf; MAQIP IAG recs 11-19-08 cover letter.pdf

All

Heading into next week's meeting with the City on the mitigation plan for the OAB, I am circulating a couple historical documents from a time several years ago when many of us were struggling over the adequacy of another plan. These go to the question of "**what is a plan ?**". At the time many were frustrated with the vagueness of many elements of the MAQIP. On 11/19/08 all of our respective agencies (ARB, BAAQMD, ACPHD, EPA) co-signed a letter objecting to that vagueness, insisting on "*concrete actions*" with "*specific timelines*" and attached a document with concrete recommendations including "*timelines*" and identification of "*responsible parties*." BAAQMD followed up with a separate letter on December 5 and the BAAQMD Board adopted a resolution along those same lines. In the world of State Implementation Plans (SIP) in which several of us (ARB, BAAQMD, EPA) have been engaged for decades, there is also a requirement for clarity regarding "*enforceability*."

I'm circulating these hoping we can attain some clarity as to what constitutes a meaningful plan. Documents attached. Please let me know if you would like to talk before the Tuesday meeting.

Richard

November 19, 2008

Omar Benjamin, Executive Director
Maritime Committee
Port of Oakland
530 Water Street
Oakland, CA 94607

Dear Director Benjamin and Port of Oakland Maritime Committee:

The members of the Maritime Air Quality Improvement Plan (MAQIP) Interagency Group are pleased to submit to you the attached document, entitled, "Proposed Near-Term Implementation Plan".

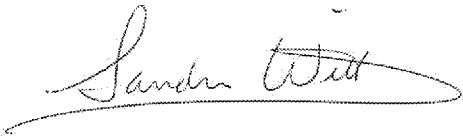
We would like to take the opportunity to congratulate the Port Board of Commissioners for establishing a goal of 85% reduction in health risks by 2020. We appreciate that the Port created a multi-stakeholder task force to assist with the development of the MAQIP and the revised version of the MAQIP reflects many recommendations that the taskforce members contributed.

Our Interagency group feels it is very important for the Port Commission to take some additional concrete steps to make the MAQIP a plan that clearly demonstrates the Port's strong commitment to improving air quality and the health of Oakland residents who live near the Port. The attached document outlines concrete actions and specific timelines that the Port can take to reduce or eliminate negative health impacts. These are actions that we believe are critical to ensuring the MAQIP attains its stated goals. The Interagency Group would like the Near-Term Implementation Plan to accompany the MAQIP. It is our hope that this proposal will be discussed during the Port's Maritime Committee meeting, scheduled for November 20, 2008 and as a result, moved forward to the full Board for review, discussion and approval.

The Interagency group of the MAQIP is comprised of representatives from California Air Resources Board, Bay Area Air Quality Management District, Environmental Protection Agency, City of Oakland, Alameda County Public Health Department, Alameda County Environmental Health Department, Alameda County Board of Supervisors, and the Port of Oakland. If you

should have any questions concerning our proposal please contact Dr.
Sandra Witt (Alameda County Public Health Department) at 510-267-8018.

Sincerely,

A handwritten signature in cursive script that reads "Sandra Witt". The signature is written in dark ink and has a fluid, connected style.

Sandra Witt
Alameda County Public Health Department

Cynthia Marvin
California Air Resources Board

Jean Roggenkamp
Bay Area Air Quality Management District

Amy Zimpfer
US Environmental Protection Agency

Supervisor Keith Carson
Alameda County Board of Supervisors

Supervisor Nate Miley
Alameda County Board of Supervisors

Pamela Evans
Alameda County Environmental Health

Proposed Near-Term Implementation Plan for
PORT OF OAKLAND MARITIME AIR QUALITY IMPROVEMENT PLAN

Summary of Concrete Actions to be Taken by the Port
to Help Reduce the Health Risk from Diesel Particulate Matter from Seaport Sources 85% by 2020

The MAQIP (Table 9-3) includes an expansive list of primary and secondary air quality initiatives to cut emissions and health risk, increase efficiency, and reduce community impacts. These initiatives rely on possible future actions by the Port and its partners (including other agencies and the Port's tenants and customers) to successfully implement them.

The Port of Oakland is demonstrating its leadership and commitment to the MAQIP by itemizing the concrete actions the Commission and staff will take to expedite the Port's own emission control measures (Table 8-2) in several key areas. The most significant actions the Port can take in the near-term to achieve the goals of the MAQIP are: (1) to establish a source of continued funding for early action incentives, (2) to transition the fleet of port drayage trucks to much cleaner models by the end of 2009, and (3) to embrace and promote the use of shore-based power for ships at dock. Longer-term, the Port will also vigorously pursue efficiency improvements that can provide concurrent economic and environmental benefits. Accomplishing these major tasks in a timely fashion will build public confidence in the effectiveness of the MAQIP and the Port's ability to deliver on its promises.

OBJECTIVES AND PORT ACTIONS	RESPONSIBLE ENTITY	TIMEFRAME FOR ACTION
Near-Term Objective: Generate substantial new funding for incentives to accelerate pollution reduction programs		
• Adopt a user fee of \$12.50/TEU (\$25/container)	Commission	December 2008
• Establish Port policy to dedicate at least the first 3 years of fee revenue to air quality projects to reduce the existing health risk (for port trucks, for shore power and other projects)	Commission	December 2008 – March 2009
• Begin collection of fee	Staff	October 2009

MAQIP Interagency Proposed Near-term Implementation Plan for Discussion at 11/20/08 Maritime Committee

OBJECTIVES AND PORT ACTIONS	RESPONSIBLE ENTITY	TIMEFRAME FOR ACTION
Near-Term Objective: Quickly clean up the fleet of 2,000 diesel trucks that frequently serve the Port to cut pollution in West Oakland and neighboring communities		
<ul style="list-style-type: none"> Establish Port policy to move the clean truck strategy ahead of the pending comprehensive truck management plan to support compliance with the 2009 deadline in the Air Resources Board's (ARB) rule, ensure trucks are available to legally carry cargo to and from the Port without disruption, and maximize the Proposition 1B funding available for this purpose 	Commission	December 2008
<ul style="list-style-type: none"> Amend the existing Memorandum of Understanding (MOU) with the Bay Area Air Quality Management District (District) to allow the Port's \$5 million in committed funds to be used for truck replacements after demand for retrofits is exhausted 	Commission BAAQMD	December 2008 - January 2009
<ul style="list-style-type: none"> Develop and implement a financing mechanism to leverage the first 3 years of user fee revenues to make the funds available in 2009 for clean truck projects 	Commission Staff	December 2008 January - June 2009
<ul style="list-style-type: none"> Develop an expanded MOU with the District to provide advance funds in 2009 from the user fees to leverage new commitments in 2009 in State, District and regional funding for cleaner trucks 	Commission Staff BAAQMD	December 2008 January-February 2009
<ul style="list-style-type: none"> Negotiate and establish bulk purchase prices for new trucks (like the Ports of Los Angeles and Long Beach) 	Commission City Staff	January 2009 February – June 2009
<ul style="list-style-type: none"> Consider amendments to Prop 1B Guidelines to allow truckers who get retrofit funds to also apply for replacement funds 	ARB	January 2009
Interagency group will pursue other sources of funding for the clean truck strategy including but not limited to economic development grants, economic stimulus funds, Transportation, West Coast Collaborative, small business grants and loans, and others.	Interagency group	December 2008-February 2009

OBJECTIVES AND PORT ACTIONS	RESPONSIBLE ENTITY	TIMEFRAME FOR ACTION
Near-Term Objective: Take the leadership role in bringing shore-based power to all cargo ship berths to dramatically cut ship pollution at dock		
<ul style="list-style-type: none"> Establish a Port policy to promote and enable the use of shore power at all cargo ship berths to comply with ARB's rule to reduce emissions from ships at dock 	Commission	December 2008 – January 2009
<ul style="list-style-type: none"> Provide staff report to the public and the Commission on proposed funding sources for shore-side infrastructure, including State monies (directly or through the District), a tariff on the terminal operators, lease requirements, and/or other means 	Staff	January – May 2009
<ul style="list-style-type: none"> Work with marine terminal operators, carriers, Pacific Gas and Electric and others to design a plan for installation of shore power at marine terminals and modification of ships to accept that power (compliance plans are due to ARB by July 2009 under State regulation). 	Staff	January – June 2009
<ul style="list-style-type: none"> Develop an incentive-based program to increase the usage of low-sulfur marine fuels in ocean-going vessels that visit the Port. The incentives will target fuels with sulfur content below the level required by ARB's regulation. Establish a Port policy to implement the fuel incentive program if the California Air Resources Board's fuel regulation for ocean-going vessels is rescinded, overturned or otherwise not enforced. 	Commission, Staff Shipping Lines	January – June 2009 for program development

OBJECTIVES AND PORT ACTIONS	RESPONSIBLE ENTITY	TIMEFRAME FOR ACTION
Mid-Term Objective: Increase operational efficiency to reduce emissions of air pollutants and support Port growth		
<ul style="list-style-type: none"> • Provide staff report to the public and the Commission on recommended Port strategies to increase efficiency at sea, on Port property, and along transportation corridors 	Staff	Mid-2010

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 5/5/2017 1:14:13 AM
To: Strauss, Alexis [Strauss.Alexis@epa.gov]
CC: Miller, Amy [Miller.Amy@epa.gov]; Reyes, Deldi [Reyes.Deldi@epa.gov]
Subject: West Oakland items

FYI, not quite an update, but I spent a couple hours (outside of work per his needs) with Ryan last night following his "training" session with City/Port - attended by approx 20 incl. Claudia Capio; Desean and I spoke with ECRCO's Katsumi and Ericka Farrell at their request this aft; EarthJustice checked in later; Details available when needed. Next week is first City-convened meeting with ARB, BAAQMD, ACPH and us re next piece of mitigation plan. EarthJustice/Marian discussing possible mediator. In Corpus Christie Ryan did it himself, per salary. Richard

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 4/5/2017 3:12:35 PM
To: David Vintze [DVintze@baaqmd.gov]; Marvin, Cynthia@ARB (cynthia.marvin@arb.ca.gov) [cynthia.marvin@arb.ca.gov]; Elizabeth Yura (eyura@arb.ca.gov) [eyura@arb.ca.gov]; Lee, Anna, Public Health, CAPE (Anna.Lee@acgov.org) [Anna.Lee@acgov.org]
Subject: Re: Request for a meeting

Checking, I assume so.

From: David Vintze <DVintze@baaqmd.gov>
Sent: Wednesday, April 5, 2017 7:51 AM
To: Grow, Richard; Marvin, Cynthia@ARB (cynthia.marvin@arb.ca.gov); Elizabeth Yura (eyura@arb.ca.gov); Lee, Anna, Public Health, CAPE (Anna.Lee@acgov.org)
Subject: RE: Request for a meeting

Thanks Richard – can you share the complaint with us? Dave

From: Grow, Richard [mailto:Grow.Richard@epa.gov]
Sent: Wednesday, April 5, 2017 7:49 AM
To: David Vintze <DVintze@baaqmd.gov>; Marvin, Cynthia@ARB (cynthia.marvin@arb.ca.gov) <cynthia.marvin@arb.ca.gov>; Elizabeth Yura (eyura@arb.ca.gov) <eyura@arb.ca.gov>; Lee, Anna, Public Health, CAPE (Anna.Lee@acgov.org) <Anna.Lee@acgov.org>
Subject: Re: Request for a meeting

Dave

Late yesterday WOEIP via Earthjustice filed their T6 complaint with DOT, EPA and DOJ. Haven't had time to read it yet but would guess it changes the playing field. No cc's on the version I have so no clue whether it went to the City or anyone else. As much as this was pretty much expected, frankly I am very much in catch-up mode for the moment. Also talking with DOT and DHS.

Richard

From: David Vintze <DVintze@baaqmd.gov>
Sent: Wednesday, April 5, 2017 7:39 AM
To: Grow, Richard; Marvin, Cynthia@ARB (cynthia.marvin@arb.ca.gov); Elizabeth Yura (eyura@arb.ca.gov); Lee, Anna, Public Health, CAPE (Anna.Lee@acgov.org)
Subject: FW: Request for a meeting

Hello Everyone – there has been some movement from the City to discuss operational plans for the OAB. Below is my response to an email from Patricia McGowan in part asking me to attend a meeting with the City before they release a draft operational plan they received from the developer. I have requested in my response that the City set up a meeting with the public agency staff participating in the stakeholder process. The City has also requested that the Air District modify our presentation to our Mobile Source Committee to reflect that an operational mitigation plans has been prepared, which we still haven't seen yet. The City plans on attending the MSC meeting, I hope some of you can also to

Speak primarily of the opportunities available to make this a green port. I plan on updating Ms. Margaret and Brian later today. Dave

From: David Vintze

Sent: Tuesday, April 4, 2017 1:42 PM

To: 'McGowan, Patricia' <PMcGowan@oaklandnet.com>

Cc: Ranelletti, Darin <DRanelletti@oaklandnet.com>; Cole, Doug <DCole@oaklandnet.com>; Monetta, John <JMonetta@oaklandnet.com>; Cappio, Claudia <CCappio@oaklandnet.com>; Pat Cashman <ptrckcshmn@gmail.com>; Wald, Mark <MWald@oaklandcityattorney.org>; Damian Breen <dbreen@baaqmd.gov>; Jean Roggenkamp <jroggenkamp@baaqmd.gov>; Henry Hilken <HHilken@baaqmd.gov>

Subject: RE: Request for a meeting

Hi Patricia,

Your summary is mostly correct but misses the most salient points of our discussion. We were discussing why the stakeholder group does not have any confidence in the City and its stakeholder process to ensure the air quality measures in the MMRP and LDDA would be implemented. I referenced the "underground" horizontal (#1) improvements that have occurred as an example of missed opportunities because the operational mitigation programs/plans had not been developed prior to the City's approval of the underground infrastructure. If the City had required the operational mitigation programs/plans called for in the MMRP and LDDA be prepared before any infrastructure construction began (as recommended by all the stakeholders years ago) we would not be discussing "if" we have enough power at the OAB to run the zero and near zero emission technologies. The issue related to power supply is a symptom of a bigger issue related to MMRP/LDDA implementation. As far as our discussion of low or zero emission (#2) technologies that the stakeholders have been recommending, the underlying problem is not the developers pushing back on stakeholder recommendations, it is more that the City has not required the operational mitigation programs/plans be prepared before development begins, which is inconsistent with all planning principals.

As I also mentioned, the existing stakeholder process appears to be structured more toward meeting purely procedural objectives and not to develop substantive implementation strategies to reduce air pollution from OAB development. I am interested (as are the other stakeholders) in participating in a new stakeholder process that establishes up-front a commitment from the City and the Port to develop the air quality operational programs/plans identified in the MMRP and the LDDA that haven't been discussed to date in the current stakeholder process. That is why I recommended to you that City staff meet with the agency staff participating in the stakeholder process to discuss how and when the air quality operational programs/plans called for in the MMRP and LDDA can be prepared before new development plans are approved by the City or occupancy permits are issued to the warehouse under construction. This meeting should discuss all potential emission sources at the OAB and not just "buildings" per your email below. I am confident that all the public agency stakeholders would be interested in a meeting to discuss these issues with City and Port staff. I look forward to participating in such a meeting.

As an FYI, the April 20 and 27 dates will not work for me.

Take Care,

Dave

From: McGowan, Patricia [mailto:PMcGowan@oaklandnet.com]

Sent: Thursday, March 30, 2017 3:09 PM

To: David Vintze <DVintze@baaqmd.gov>

Cc: Ranelletti, Darin <DRanelletti@oaklandnet.com>; Cole, Doug <DCole@oaklandnet.com>; Monetta, John <JMonetta@oaklandnet.com>; Cappio, Claudia <CCappio@oaklandnet.com>; Pat Cashman <ptrckcshmn@gmail.com>; Wald, Mark <MWald@oaklandcityattorney.org>; Damian Breen <dbreen@baaqmd.gov>

Subject: Request for a meeting

003730 2020-10-29

Hi Dave,

You and I spoke in February after I received an e-mail from you stating that you were not interested in meeting in the current stakeholder process any further, or meeting with the developer or his team at all. During the phone call, I noted that your concerns could be summarized as:

1. Can the horizontal infrastructure bring enough electrical power to the OAB to power zero-emissions equipment and meet the future electrical needs at the OAB?
2. Zero emissions ideas were discussed at stakeholder meeting but the developers would push back and no real progress was made. "All we are getting are little pieces, like the construction AQ plan. We want a consistent approach for all the new building."
3. There should be an operational AQ plan that would set performance standards for what would apply to operations at the new buildings.
4. We should meet staff to staff, outside the quarterly stakeholder meetings, to work on this.

I am working on a reply to #1; we too want to ensure that there is enough electrical power. As far as #2 and #3, we hope that the initial AQ plans we review/approve will be used as a basis for the others. #4: We recently received the Operational Air Quality Plan from Prologis for their first building referred to at CE-1, Northeast Gateway. They have not yet secured a tenant; they have prepared this operational AQ plan to give to perspective tenants outlining the tenant's obligations regarding reducing air quality impacts and energy consumption (consistent with your request).

Prologis used the two lists we received from your office and CARB in developing their Plan and I think you will be pleased to see how many of the items on the lists have been incorporated.

We would like to have a staff to staff meeting to discuss this Plan before we release it for public comment to the stakeholders. Would you be available Thursday April 20 or 27, for a 1.5 hours meeting between 1:30-4? Our team will be Darin Ranelletti, John Monetta and myself.

We will want to focus on the items on those two lists which apply to buildings, not to ships, rail nor Port operations, but rather to warehouse operations. I am sending the meeting request to you; you can decide if you feel someone from CARB should attend. I am copying Damian Breen on this because of his interest in the project. We think it would be more efficient to have Prologis at the meeting but we will take your direction on this.

Best regards,
Pat

Patricia McGowan, Environmental Coordinator | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa, Suite 3315 | Oakland, CA 94612 | Phone: (510) 238-3588 | Fax: (510) 238-6538 | Email: PMcGowan@oaklandnet.com | Website: www.oaklandnet.com/planning

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 4/5/2017 2:49:25 PM
To: David Vintze [DVintze@baaqmd.gov]; Marvin, Cynthia@ARB (cynthia.marvin@arb.ca.gov) [cynthia.marvin@arb.ca.gov]; Elizabeth Yura (eyura@arb.ca.gov) [eyura@arb.ca.gov]; Lee, Anna, Public Health, CAPE (Anna.Lee@acgov.org) [Anna.Lee@acgov.org]
Subject: Re: Request for a meeting

Dave

Late yesterday WOEIP via Earthjustice filed their T6 complaint with DOT, EPA and DOJ. Haven't had time to read it yet but would guess it changes the playing field. No cc's on the version I have so no clue whether it went to the City or anyone else. As much as this was pretty much expected, frankly I am very much in catch-up mode for the moment. Also talking with DOT and DHS.

Richard

From: David Vintze <DVintze@baaqmd.gov>
Sent: Wednesday, April 5, 2017 7:39 AM
To: Grow, Richard; Marvin, Cynthia@ARB (cynthia.marvin@arb.ca.gov); Elizabeth Yura (eyura@arb.ca.gov); Lee, Anna, Public Health, CAPE (Anna.Lee@acgov.org)
Subject: FW: Request for a meeting

Hello Everyone – there has been some movement from the City to discuss operational plans for the OAB. Below is my response to an email from Patricia McGowan in part asking me to attend a meeting with the City before they release a draft operational plan they received from the developer. I have requested in my response that the City set up a meeting with the public agency staff participating in the stakeholder process. The City has also requested that the Air District modify our presentation to our Mobile Source Committee to reflect that an operational mitigation plans has been prepared, which we still haven't seen yet. The City plans on attending the MSC meeting, I hope some of you can also to speak primarily of the opportunities available to make this a green port. I plan on updating Ms. Margaret and Brian later today. Dave

From: David Vintze
Sent: Tuesday, April 4, 2017 1:42 PM
To: 'McGowan, Patricia' <PMcGowan@oaklandnet.com>
Cc: Ranelletti, Darin <DRanelletti@oaklandnet.com>; Cole, Doug <DCole@oaklandnet.com>; Monetta, John <JMonetta@oaklandnet.com>; Cappio, Claudia <CCappio@oaklandnet.com>; Pat Cashman <ptrckcshmn@gmail.com>; Wald, Mark <MWald@oaklandcityattorney.org>; Damian Breen <dbreen@baaqmd.gov>; Jean Roggenkamp <jroggenkamp@baaqmd.gov>; Henry Hilken <HHilken@baaqmd.gov>
Subject: RE: Request for a meeting

Hi Patricia,

Your summary is mostly correct but misses the most salient points of our discussion. We were discussing why the stakeholder group does not have any confidence in the City and its stakeholder process to ensure the air quality measures in the MMRP and LDDA would be implemented. I referenced the “underground” horizontal (#1) improvements that have occurred as an example of missed opportunities because the operational mitigation programs/plans had not been developed prior to the City’s approval of the underground infrastructure. If the City had

003732 2020-10-29

required the operational mitigation programs/plans called for in the MMRP and LDDA be prepared before any infrastructure construction began (as recommended by all the stakeholders years ago) we would not be discussing “if” we have enough power at the OAB to run the zero and near zero emission technologies. The issue related to power supply is a symptom of a bigger issue related to MMRP/LDDA implementation. As far as our discussion of low or zero emission (#2) technologies that the stakeholders have been recommending, the underlying problem is not the developers pushing back on stakeholder recommendations, it is more that the City has not required the operational mitigation programs/plans be prepared before development begins, which is inconsistent with all planning principals.

As I also mentioned, the existing stakeholder process appears to be structured more toward meeting purely procedural objectives and not to develop substantive implementation strategies to reduce air pollution from OAB development. I am interested (as are the other stakeholders) in participating in a new stakeholder process that establishes up-front a commitment from the City and the Port to develop the air quality operational programs/plans identified in the MMRP and the LDDA that haven’t been discussed to date in the current stakeholder process. That is why I recommended to you that City staff meet with the agency staff participating in the stakeholder process to discuss how and when the air quality operational programs/plans called for in the MMRP and LDDA can be prepared before new development plans are approved by the City or occupancy permits are issued to the warehouse under construction. This meeting should discuss all potential emission sources at the OAB and not just “buildings” per your email below. I am confident that all the public agency stakeholders would be interested in a meeting to discuss these issues with City and Port staff. I look forward to participating in such a meeting.

As an FYI, the April 20 and 27 dates will not work for me.

Take Care,

Dave

From: McGowan, Patricia [<mailto:PMcGowan@oaklandnet.com>]
Sent: Thursday, March 30, 2017 3:09 PM
To: David Vintze <DVintze@baaqmd.gov>
Cc: Ranelletti, Darin <DRanelletti@oaklandnet.com>; Cole, Doug <DCole@oaklandnet.com>; Monetta, John <JMonetta@oaklandnet.com>; Cappio, Claudia <CCappio@oaklandnet.com>; Pat Cashman <ptrckcshmn@gmail.com>; Wald, Mark <MWald@oaklandcityattorney.org>; Damian Breen <dbreen@baaqmd.gov>
Subject: Request for a meeting

Hi Dave,

You and I spoke in February after I received an e-mail from you stating that you were not interested in meeting in the current stakeholder process any further, or meeting with the developer or his team at all. During the phone call, I noted that your concerns could be summarized as:

1. Can the horizontal infrastructure bring enough electrical power to the OAB to power zero-emissions equipment and meet the future electrical needs at the OAB?
2. Zero emissions ideas were discussed at stakeholder meeting but the developers would push back and no real progress was made. “All we are getting are little pieces, like the construction AQ plan. We want a consistent approach for all the new building.”
3. There should be an operational AQ plan that would set performance standards for what would apply to operations at the new buildings.
4. We should meet staff to staff, outside the quarterly stakeholder meetings, to work on this.

I am working on a reply to #1; we too want to ensure that there is enough electrical power. As far as #2 and #3, we hope that the initial AQ plans we review/approve will be used as a basis for the others. #4: We recently received the Operational Air Quality Plan from Prologis for their first building referred to at CE-1, Northeast Gateway. They have not

yet secured a tenant; they have prepared this operational AQ plan to give to perspective tenants outlining the tenant's obligations regarding reducing air quality impacts and energy consumption (consistent with your request).

Prologis used the two lists we received from your office and CARB in developing their Plan and I think you will be pleased to see how many of the items on the lists have been incorporated.

We would like to have a staff to staff meeting to discuss this Plan before we release it for public comment to the stakeholders. Would you be available Thursday April 20 or 27, for a 1.5 hours meeting between 1:30-4? Our team will be Darin Ranelletti, John Monetta and myself.

We will want to focus on the items on those two lists which apply to buildings, not to ships, rail nor Port operations, but rather to warehouse operations. I am sending the meeting request to you; you can decide if you feel someone from CARB should attend. I am copying Damian Breen on this because of his interest in the project. We think it would be more efficient to have Prologis at the meeting but we will take your direction on this.

Best regards,
Pat

Patricia McGowan, Environmental Coordinator | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa, Suite 3315 | Oakland, CA 94612 | Phone: (510) 238-3588 | Fax: (510) 238-6538 | Email: PMcGowan@oaklandnet.com | Website: www.oaklandnet.com/planning

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 12/13/2017 5:23:30 PM
To: O'Lone, Mary [olone.mary@epa.gov]
CC: Israels, Ken [Israels.Ken@epa.gov]
Subject: West Oakland findings
Attachments: BAAQMD 12_7_2017 MSC Port_OAB.pdf; CA AG Coal Amicus Brief 12_2010.pdf; BAAQMD 12_7_2017 Update on the Port of Oakland-and 617.pptx

Mary

I wanted to provide some background on the generally held view around here (R9) and mentioned in Alexis' message yesterday, that the information supporting a finding of discriminatory impacts would seem to be readily available. It has become routine around here for S/L environmental and public health agencies to refer to West Oakland and being subject to very disproportional impacts due to diesel pollutants. In just the past week, for instance, last Thursday morning the BAAQMD board was provided an update on the Port and OAB, accompanied by a letter from the District's EO stating:

"...current regional risk projections show that West Oakland remains the most highly impacted community in the Bay Area relative to exposure to toxic air contaminants..." (p2, letter attached "BAAQMD 12_7_2017...")

Also attached is the PPT presentation for that discussion, the 5th slide providing a graphical portrayal of this fact. The accompanying bullets on the same slide make reference to the District's CARE studies support for this observation which, as you have mentioned, has already been used by EPA as documentation in its resolution in earlier T6 proceedings.

And on the following day the CA AG filed the attached amicus brief supporting the City's refusal to accommodate a coal terminal at the OAB:

"[T]he Terminal will be located on the western edge of West Oakland, which will bear the brunt of any pollution. The West Oakland community carries the unwanted distinction of being near the top of the list of California communities overburdened by pollution. This is a community primarily of low-income people of color, surrounded by significant pollution sources. Particulate matter is already a concern in the Bay Area overall and the West Oakland community's exposure to PM, in particular, is three times higher than other communities in the Bay Area. And PM's disproportionate health impact is significant: According to a 2008 study, in West Oakland, the estimated lifetime potential cancer risk due to PM emissions from Port operations alone is about seven times that of the region as a whole – 200 excess cancers per million, compared to 30 excess cancers per million. West Oakland has some of the highest emergency room and hospitalization rates in Oakland and Alameda County, due to issues related to air pollution, including childhood asthma, overall asthma, and congestive heart failure. The collective impact of the various risks faced by West Oakland residents, including pollution, is that the life expectancy for residents of West Oakland is 12.4 years less than residents in more affluent Oakland neighborhoods."

Tying these to the readily documentable fact that West Oakland is itself "disproportionately" comprised of minority populations, arguably most or all of the essential elements of a finding of discriminatory impacts are already at hand. Or perhaps not? If we had clarity/agreement with HQ on what the required elements are, I'd be inclined to start working with CARB/BAAQMD in assembling the necessary documents, if for no other reason than to maintain the *option* of making a finding if and when it is seen as needed. Any thoughts welcome. Copying Ken.

Richard

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

Memorandum

To: Chairperson Karen Mitchoff and Members
of the Mobile Source Committee

From: Jack P. Broadbent
Executive Officer/APCO

Date: November 20, 2017

Re: Update on Efforts to Further Reduce Emissions at the Port of Oakland and Former
Oakland Army Base

RECOMMENDED ACTION

None; receive and file.

BACKGROUND

The Port of Oakland (Port) is the fifth largest container port in the United States and the second largest in the State of California behind the combined ports of Los Angeles and Long Beach. Established in 1927, the Port is home to 18 ship berths, 36 container cranes, two rail yards, approximately 500 pieces of cargo handling equipment and approximately 2,500 trucks. In 2016, the Port moved 2.37 million 20-foot equivalent units (TEU) in to and out of the Bay Area. This flow of containers is associated with over \$600 billion in goods that are linked to approximately 32% of the jobs in the Bay Area.

The Port and former Oakland Army Base redevelopment project (OAB) border the West Oakland and in 2008, the California Air Resources Board (ARB) in partnership with the Bay Area Air Quality Management District (Air District) conducted a health risk assessment (HRA) to determine what emission sources were contributing to poor air quality in that community. That HRA indicated that the health risk from toxic air pollution (primarily diesel particulate matter, or DPM) in West Oakland was three times higher than any other community in the Bay Area. Based on the results of the HRA, the Air District Board of Director's instructed staff to utilize all available options at its disposal to reduce this health risk. The Air District in partnership with the ARB, United States Environmental Protection Agency, Port, industry, and local community instituted policies and actions which:

- Devised the Marine Air Quality Improvement Plan which targets an 85% reduction in DPM emissions by 2020;
- Instituted and enforced regulations on drayage trucks, harbor craft, off-road equipment, oceangoing vessels and cargo handling equipment;
- Instituted and enforced a noncompliant truck ban under the Port's authority;
- Performed real-time monitoring of emissions in the West Oakland community;
- Invested \$33 million in grant funding to initially retrofit 1,319 trucks and to subsequently replace an additional 627 trucks;

- Invested \$24.5 million to install shore side power at 15 berths at the Port.

These efforts, in combination with implementation of ARB regulations requiring emissions reductions from cargo handling equipment, drayage trucks, refrigerated transportation units, oceangoing vessels, harbor craft and ships at berth, have significantly reduced DPM emissions from marine operations (by possibly as much as 76% according to latest inventory produced by the Port). Additionally, ARB regulations have led to significant emissions reductions from on-road truck traffic using the highways surrounding the West Oakland community.

While this is good news, the science around the health risk posed by DPM has changed significantly since 2008. Recent changes to the guidelines governing the assessment of health risk, developed by the California Office of Environmental Health Hazard Assessment (OEHHA), have increased the health risk from DPM by a factor of approximately 3 to 4 times of those originally used in the 2008 HRA. This means that while DPM emissions have been reduced significantly, remaining emissions have a greater impact on the community's health than what was previously understood.

DISCUSSION

Recognizing that there is an increased health risk from DPM and that the Air District's Community Air Risk Evaluation (CARE) current regional risk projections show that West Oakland remains the most highly impacted community in the Bay Area relative to exposure to toxic air contaminants, Air District staff initiated an inquiry during summer 2016 to assess how emissions might be further reduced from Port maritime operations.

This effort included updating the equipment inventories for the Port, trying to understand what may be developed at OAB, reviewing the planning frameworks at the local, state and federal levels to determine how an equipment replacement project integrates with those plans, examining how the authorities of the various regulatory agencies (Port, City of Oakland, ARB, etc.) might be used to reduce emissions, looking at initiatives at other California ports and conducting a comprehensive evaluation of feasible technologies that can be employed to get further emissions reductions. As part of this effort the Air District met with representatives from the City of Oakland, Port, ARB, Metropolitan Transportation Commission, Alameda County Transportation Commission and the Alameda County Health Department for their input.

While the Air District did this work, the former OAB continued to be redeveloped. This new activity triggers California Environmental Quality Act (CEQA) mitigation requirements for the developer, City of Oakland and Port. It is important that these requirements be effectively implemented to adequately address the possible impacts that additional DPM from this project may have on the West Oakland community.

As part of this report staff will update the Committee on the results of its evaluation of feasible technologies that can be employed to get further emissions reductions, efforts to ensure DPM reductions from the current development at the OAB and next steps to engage the community and industry to finalize an expenditure plan targeted at reducing health risk from mobile sources operating in and around the Port of Oakland and OAB.

BUDGET CONSIDERATION / FINANCIAL IMPACT

None.

Respectfully submitted,

Jack P. Broadbent
Executive Officer/APCO

Prepared by: Karen Schkolnick
Reviewed by: Damian Breen

Message

From: Grow, Richard [Grow.Richard@epa.gov]
Sent: 12/13/2017 12:52:11 AM
To: Strauss, Alexis [Strauss.Alexis@epa.gov]
Subject: RE: City of Oakland/Port of Oakland

Excellent. Let me know if you need anything for this, suggested language (previously provided to Kurt etc.), other docs.

From: Strauss, Alexis
Sent: Tuesday, December 12, 2017 1:49 PM
To: Grow, Richard
Subject: FW: City of Oakland/Port of Oakland

From: Dorka, Lilian
Sent: Tuesday, December 12, 2017 1:45 PM
To: Strauss, Alexis <Strauss.Alexis@epa.gov>
Cc: Temple, Kurt <Temple.Kurt@epa.gov>
Subject: RE: City of Oakland/Port of Oakland

Hello Alexis, good to hear from you! Thanks for your email. I totally understand your concerns and fully appreciate the urgency of this matter. Would love to talk with you this week and share my thoughts. Do you have any time this Thursday after 3:30 EST or Friday after 3:30 EST? I can give you a call. Thanks!

Lilian SotoLongo Dorka, Esq.
Director, External Civil Rights Compliance Office
EPA, Office of General Counsel
202-564-9649
WJC-N Room 2450

From: Strauss, Alexis
Sent: Tuesday, December 12, 2017 2:46 PM
To: Dorka, Lilian <Dorka.Lilian@epa.gov<mailto:Dorka.Lilian@epa.gov>>; Temple, Kurt <Temple.Kurt@epa.gov<mailto:Temple.Kurt@epa.gov>>
Subject: City of Oakland/Port of Oakland

Dear Lillian and Kurt,
I'm sorry I haven't been able to join the recent calls on this Title VI matter, though our Region 9 team has been diligently keeping me up-to-date. We're soon approaching the six-month mark since accepting the complaint, which leads me to suggest we convene an EPA-only conversation about the path forward.

I had been hopeful the informal-resolution path, and the shared EPA/DOT responsibility for this case, would be productive. In our Region 9 role as your technical advisors, I'm particularly concerned about the lack of substance, and the lack of substantive progress, at this stage. It would be very easy for us to craft the factual elements of discriminatory impacts regarding West Oakland, while the City and Port's development continues unabated. There are less discriminatory alternatives, but there is no real impetus or pressure upon the City and Port to make such commitments.

I recommend we take stock of our situation, and understand what we want to do with this case. To continue weeks and months more of this vague involvement is not a good use of EPA's time, and could only reinforce the community's reluctance to have pursued this option. I'd be grateful to talk further with you and understand where we're headed.

Warm regards,
Alexis

Alexis Strauss
Acting Regional Administrator
E.P.A. Region 9
75 Hawthorne Street
San Francisco, CA 94105
415-972-3572

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 12/12/2017 10:18:24 PM
To: Fitzpatrick, Ryan (OST) [ryan.fitzpatrick@dot.gov]
Subject: RE: Community advocacy groups

Sure. Would you include other NGOs or advocates or observers who have dug in such as EDF, UC Berkeley, Ditching Dirty Diesel Collaborative (a multi-org collaborative very much concerned about W.O and freight impacts) ?

From: Fitzpatrick, Ryan (OST) [mailto:ryan.fitzpatrick@dot.gov]
Sent: Tuesday, December 12, 2017 2:12 PM
To: Grow, Richard <Grow.Richard@epa.gov>
Subject: RE: Community advocacy groups

We can chat later this week. I've found in my investigations its very useful to hear from other community groups active in the process, cause it helps to tamp down on internal talk that "oh maybe so-and-so community group is just outlandish or unreasonable" when you can point to other groups with the same problems. Or different takes on the same issue. WOEIP can't be the ONLY community advocacy group participating in these processes.

Ryan N. Fitzpatrick, Esq.
Lead Civil Rights Analyst
Departmental Office of Civil Rights
Office of the Secretary
U.S. Department of Transportation
(202) 366-1583

From: Grow, Richard [mailto:Grow.Richard@epa.gov]
Sent: Tuesday, December 12, 2017 5:08 PM
To: Fitzpatrick, Ryan (OST) <ryan.fitzpatrick@dot.gov>
Subject: RE: Community advocacy groups

Representing community members themselves it's been pretty much EIP on a.q mitigation. Other voices around the table have been the S/L agencies (ARB, BAAQMD, County Health). On the truck plan there's a little different mix, and other formations such as West Oakland Neighbors (Ray Kidd), some truckers etc. I can excavate some of the attendee lists on the truck side if you want. On a.q. mitigation, if you go back to the EIP foundational; studies ("Neighborhood Knowledge for Change" and so on) it was truly a block by block participatory process. I can dig deeper, see who EIP has on their own invitational lists, like for last week's pre-truck plan meeting Thursday night held at a community center. Maybe you and I should chat ?

From: ryan.fitzpatrick@dot.gov [mailto:ryan.fitzpatrick@dot.gov]
Sent: Tuesday, December 12, 2017 12:48 PM
To: Grow, Richard <Grow.Richard@epa.gov>
Subject: Community advocacy groups

Hey Richard:

Who are some of the other community advocacy groups that have been participating in City/Port public meetings? It'd be valuable to talk to them at some point too. If you could list some of the other active groups for me in this redevelopment, that'd be helpful.

Ryan

Ryan N. Fitzpatrick, Esq.
Lead Civil Rights Analyst
Departmental Office of Civil Rights
Office of the Secretary
U.S. Department of Transportation
(202) 366-1583

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 12/12/2017 10:07:49 PM
To: ryan.fitzpatrick@dot.gov
Subject: RE: Community advocacy groups

Representing community members themselves it's been pretty much EIP on a.q mitigation. Other voices around the table have been the S/L agencies (ARB, BAAQMD, County Health). On the truck plan there's a little different mix, and other formations such as West Oakland Neighbors (Ray Kidd), some truckers etc. I can excavate some of the attendee lists on the truck side if you want. On a.q. mitigation, if you go back to the EIP foundational; studies ("Neighborhood Knowledge for Change" and so on) it was truly a block by block participatory process. I can dig deeper, see who EIP has on their own invitational lists, like for last week's pre-truck plan meeting Thursday night held at a community center. Maybe you and I should chat ?

From: ryan.fitzpatrick@dot.gov [mailto:ryan.fitzpatrick@dot.gov]
Sent: Tuesday, December 12, 2017 12:48 PM
To: Grow, Richard <Grow.Richard@epa.gov>
Subject: Community advocacy groups

Hey Richard:

Who are some of the other community advocacy groups that have been participating in City/Port public meetings? It'd be valuable to talk to them at some point too. If you could list some of the other active groups for me in this redevelopment, that'd be helpful.

Ryan

Ryan N. Fitzpatrick, Esq.
Lead Civil Rights Analyst
Departmental Office of Civil Rights
Office of the Secretary
U.S. Department of Transportation
(202) 366-1583

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 12/12/2017 3:35:54 PM
To: Temple, Kurt [Temple.Kurt@epa.gov]
Subject: RE: Timing for T6 calls to the City and Port, and WOEIP

Thanks Kurt, will this be just you and Ryan, or will there be a broader cast from ECRCO, ie Lilian ?

From: Temple, Kurt
Sent: Tuesday, December 12, 2017 6:16 AM
To: Grow, Richard <Grow.Richard@epa.gov>
Subject: RE: Timing for T6 calls to the City and Port, and WOEIP

Richard: We have the touch base conversation scheduled with recipients for 2:00PM Eastern tomorrow.

Kurt

From: Temple, Kurt
Sent: Monday, December 11, 2017 12:27 PM
To: Grow, Richard <Grow.Richard@epa.gov>
Subject: Re: Timing for T6 calls to the City and Port, and WOEIP

Ryan is going to reach out today to assess recipients' availability for a call this week. I will keep you posted. Kurt

From: Grow, Richard
Sent: Monday, December 11, 2017 12:01:03 PM
To: Temple, Kurt
Subject: Timing for T6 calls to the City and Port, and WOEIP

Hi Kurt

Could you let us know when you and DOT schedule the calls with the recipients and with EIP ? I'm not assuming we'd be on the calls, but we (Alexis) may hope to touch base with you before the calls take place. We're not meeting with her until tomorrow morning. Thanks

Richard

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 12/11/2017 5:01:03 PM
To: Temple, Kurt [Temple.Kurt@epa.gov]
Subject: Timing for T6 calls to the City and Port, and WOEIP

Hi Kurt

Could you let us know when you and DOT schedule the calls with the recipients and with EIP ? I'm not assuming we'd be on the calls, but we (Alexis) may hope to touch base with you before the calls take place. We're not meeting with her until tomorrow morning. Thanks

Richard

Message

From: Grow, Richard [Grow.Richard@epa.gov]
Sent: 12/11/2017 4:50:23 PM
To: Strauss, Alexis [Strauss.Alexis@epa.gov]
Subject: Tuesday 11: Recommended R9 "technical advice" to ECRCO re West Oakland T6

Thank you. Ken is available and I'll check with others.

From: Strauss, Alexis
Sent: Monday, December 11, 2017 8:34 AM
To: Grow, Richard
Subject: RE: Recommended R9 "technical advice" to ECRCO re West Oakland T6

I could meet today at 2 or tomorrow between 10 and 2.

Alexis Strauss
Acting Regional Administrator
E.P.A. Region 9
75 Hawthorne Street
San Francisco, CA 94105
415-972-3572

-----Original Message-----

From: Grow, Richard
Sent: Saturday, December 9, 2017 3:13 PM
To: Strauss, Alexis <Strauss.Alexis@epa.gov>
Subject: Recommended R9 "technical advice" to ECRCO re West Oakland T6

Alexis

I know your schedule is already impossible, but two events last week lead me to request that we talk soon to discuss "technical advice" I am recommending that we provide to ECRCO. Those events:

1. Based on the Wednesday 12/6 call between ECRCO, R9 and DOT, and confirmed in calls I made the following day to both Kurt and Ryan, it appears that the "informal resolution" path has become diffuse, unproductive and may soon become counterproductive;
2. On Friday 12/8 Earthjustice submitted, as previously invited by EPA and DOT, a letter listing "ideas on the types of actions that the City and Port should be taking..." The four page letter and 3 page attachment were accompanied by a 1044 compilation of background materials supporting the recommendations in the letter.

I recommend we provide advice soon, preferably before ECRCO and DOT have their "check-in" call with the City and Port per the 12/6 interagency discussions. I would like to discuss with you the rationale for the recommended technical advice, a draft of which I can provide. If you are available, I will round up other staff as available (Ken, Desean, Deldi), but feel this needs to happen soon if it is to be useful.

Richard

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 6/29/2017 7:42:06 PM
To: Machol, Ben [Machol.Ben@epa.gov]
CC: McDaniel, Penelope [MCDANIEL.PENELOPE@EPA.GOV]; Donez, Francisco [Donez.Francisco@epa.gov]; BANDROWSKI, MIKE [Bandrowski.Mike@epa.gov]; Matthew Lakin [Lakin.Matthew@epa.gov]
Subject: RE: Kaplan/BAAQMD initiative: Solutions for Reducing and Preventing Emissions at the Port of Oakland and Oakland Army Base Working Meeting

Ben – Looks like no Port or City, nor community reps (WOEIP). I'm still checking but best guess is they hope to have solid agency alignment this time (we weren't invited or involved last time) before pulling City/Port in. Kaplan wears several hats including Citywide councilperson, BAAQMD board member, ACTC chair and sometimes candidate for mayor. Cynthia is bringing staff, I'm sure your office would be welcome also.

Richard

From: Machol, Ben
Sent: Wednesday, June 28, 2017 10:53 AM
To: Grow, Richard <Grow.Richard@epa.gov>
Cc: McDaniel, Penelope <MCDANIEL.PENELOPE@EPA.GOV>; Donez, Francisco <Donez.Francisco@epa.gov>
Subject: RE: Kaplan/BAAQMD initiative: Solutions for Reducing and Preventing Emissions at the Port of Oakland and Oakland Army Base Working Meeting

Hi Richard,

Hopefully they will get more traction this time. I assume the port will be in attendance as well, correct? I couldn't tell from the email from Aloha.

Let's set up a time for you and Penny, Francisco, and me to talk beforehand, to make sure you're adequately prepared.

Ben Machol, P.E.
Manager, Technology & Partnerships Office
U.S. Environmental Protection Agency, Region 9
75 Hawthorne St. (AIR-9)
San Francisco, CA 94105
machol.ben@epa.gov
(415) 972-3770

From: Grow, Richard
Sent: Wednesday, June 28, 2017 10:16 AM
To: Machol, Ben <Machol.Ben@epa.gov>
Cc: McDaniel, Penelope <MCDANIEL.PENELOPE@EPA.GOV>; Adams, Elizabeth <Adams.Elizabeth@epa.gov>; Lakin, Matt <Lakin.Matthew@epa.gov>; BANDROWSKI, MIKE <Bandrowski.Mike@epa.gov>; Reyes, Deldi <Reyes.Deldi@epa.gov>
Subject: FW: Kaplan/BAAQMD initiative: Solutions for Reducing and Preventing Emissions at the Port of Oakland and Oakland Army Base Working Meeting

Ben

Per the email chain below, BAAQMD is launching what appears to be a reboot of an initiative they attempted last fall (Aug – December) but came to naught. Per my note I am trying to ascertain what level of involvement is wanted. I'm

sure higher level of visibility would be welcome but can't vouch for whether this would be a productive use of your office's time.

Richard

From: Grow, Richard

Sent: Wednesday, June 28, 2017 10:09 AM

To: Strauss, Alexis <Strauss.Alexis@epa.gov>

Cc: Miller, Amy <Miller.Amy@epa.gov>; LUEHE, DOUGLAS <luehe.douglas@epa.gov>; Reyes, Deldi <Reyes.Deldi@epa.gov>

Subject: Kaplan/BAAQMD initiative: Solutions for Reducing and Preventing Emissions at the Port of Oakland and Oakland Army Base Working Meeting

This appears to be the \$100M+ initiative I heard about last week from Damian Breen, deputy APCO at BAAQMD, basically a revival of last fall's initiative and sponsored by Councilwoman Kaplan in her roles on City Council, BAAQMD Board member and chair of the ACTC. I plan to attend and am checking whether they want to orchestrate this at a higher level.

Richard

From: Aloha Galimba [<mailto:agalimba@baaqmd.gov>]

Sent: Wednesday, June 28, 2017 8:48 AM

To: abockelman@mtc.ca.gov; Grow, Richard <Grow.Richard@epa.gov>; cynthia.marvin@arb.ca.gov; Karen Schkolnick <kschkolnick@baaqmd.gov>; muntu.davis@acgov.org; anna.lee@acgov.org

Cc: Sheng Thao <sthao@oaklandnet.com>

Subject: Solutions for Reducing and Preventing Emissions at the Port of Oakland and Oakland Army Base Working Meeting

Hello,

The Bay Area Air Quality Management District is inviting you – or a representative from your organization - to attend a working meeting on solutions for reducing emissions and health impacts in the West Oakland Community from current operations at the Port of Oakland and future operations at the former Oakland Army Base.

This meeting will be hosted by Oakland Council Member at Large, Rebecca Kaplan, at the Alameda County Transportation Commission, which is located at 11th and Broadway in Downtown Oakland on **Friday July 14, 2017 between 12 pm – 2 pm.**

The goal of this meeting is to devise a workplan that harnesses and coordinates the resources of the participating entities.

Please confirm your participation with me with a CC to Ms. Kaplan' assistant Sheng Thao at Sthao@oaklandnet.com. If you have any questions or concerns, please feel free to reach out to me directly.

Thank you and have a great rest of the day!

Regards,

Aloha de Guzman

Executive Secretary

Bay Area Air Quality Management District
Executive Office

375 Beale Street, Suite 600 | San Francisco, CA 94105
Office: 415.749.4782 | Cell: 415.745.5633

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 12/9/2017 11:12:37 PM
To: Strauss, Alexis [Strauss.Alexis@epa.gov]
Subject: Recommended R9 "technical advice" to ECRCO re West Oakland T6

Alexis

I know your schedule is already impossible, but two events last week lead me to request that we talk soon to discuss "technical advice" I am recommending that we provide to ECRCO. Those events:

1. Based on the Wednesday 12/6 call between ECRCO, R9 and DOT, and confirmed in calls I made the following day to both Kurt and Ryan, it appears that the "informal resolution" path has become diffuse, unproductive and may soon become counterproductive;
2. On Friday 12/8 Earthjustice submitted, as previously invited by EPA and DOT, a letter listing "ideas on the types of actions that the City and Port should be taking..." The four page letter and 3 page attachment were accompanied by a 1044 compilation of background materials supporting the recommendations in the letter.

I recommend we provide advice soon, preferably before ECRCO and DOT have their "check-in" call with the City and Port per the 12/6 interagency discussions. I would like to discuss with you the rationale for the recommended technical advice, a draft of which I can provide. If you are available, I will round up other staff as available (Ken, Desean, Deldi), but feel this needs to happen soon if it is to be useful.

Richard

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 6/29/2017 7:32:57 PM
To: Strauss, Alexis [Strauss.Alexis@epa.gov]
Subject: RE: West Oakland

Yes LD conveyed her discomfort with my DOT channels, I plan to obey.

From: Strauss, Alexis
Sent: Thursday, June 29, 2017 12:27 PM
To: Grow, Richard <Grow.Richard@epa.gov>
Cc: LUEHE, DOUGLAS <luehe.douglas@epa.gov>; Miller, Amy <Miller.Amy@epa.gov>; Reyes, Deldi <Reyes.Deldi@epa.gov>
Subject: West Oakland

Richard,
Thanks. What a difference a day makes, as the song goes....
Glad to meet whenever you have a draft. Recommend laying low in outreach to US DOT, let's chat.
Alexis

Alexis Strauss
Acting Regional Administrator
E.P.A. Region 9
75 Hawthorne Street
San Francisco, CA 94105
415-972-3572

From: Grow, Richard
Sent: Thursday, June 29, 2017 12:24 PM
To: Strauss, Alexis <Strauss.Alexis@epa.gov>
Cc: LUEHE, DOUGLAS <luehe.douglas@epa.gov>; Miller, Amy <Miller.Amy@epa.gov>; Reyes, Deldi <Reyes.Deldi@epa.gov>
Subject: Evolving state of play in West Oakland

Alexis (cc Amy & Doug)

Since our discussion on Tuesday about our response to Ken Alex/OPR, several other developments have surfaced that may affect the playing field around the same time our response is likely to go out:

- BAAQMD and Councilwoman Kaplan are convening a meeting on July 14 of the relevant agencies (BAAQMD, ARB, ACPH, EPA) to develop a workplan for "solutions" addressing the impacts of the Port and OAB. This appears to be a restart of the \$100M incentives initiative from last fall. I am working with Ben Machol's office to prepare for that meeting.
- On July 13 CalEPA's EJ/Enforcement initiative is hosting a West Oakland community meeting. While the scope if the initiative is the broad set of public health and safety issues in W.O., staff has expressed interest in dealing with the community's Port/OAB issues. A call with CalEPA and CARB's Deputy Executive EJ officer Veronica Eady has been tentatively set for next week.

- CalEPA's new Assistant Secretary for EJ, replacing Arsenio Mataka, has just been announced as Yana Garcia. Yana was the lead attorney for EarthJustice on the West Oakland Title VI complaint filed in April against the City and Port.
- ECRCO advised yesterday re the T6 complaint that "ECRCO has been communicating and coordinating with DOT and DOJ directly on this..." and they "anticipate that there will be movement on this very soon..." I was told last week by DOT that they are basically ready to go out with an acceptance letter. ECRCO assures us we will see the acceptance letter before it is finalized.
- On Tuesday DHS provided an update on their efforts to ensure the upcoming renewal of the lease for the Customs station in West Oakland is well informed by the community's involvement and concerns. DHS and I plan to talk in greater detail on this next week. I anticipate reluctance by the Customs station operators to relocating their operations.

Beyond that, I am meeting with WOEIP tomorrow morning and will be talking with BAAQMD and Cynthia/ARB today or tomorrow. Meanwhile I will continue developing a draft response to Ken Alex taking into account the changing state of play and whatever can be learned about the state's interests and roles in West Oakland.

Richard

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 6/29/2017 7:24:12 PM
To: Strauss, Alexis [Strauss.Alexis@epa.gov]
CC: LUEHE, DOUGLAS [luehe.douglas@epa.gov]; Miller, Amy [Miller.Amy@epa.gov]; Reyes, Deldi [Reyes.Deldi@epa.gov]
Subject: Evolving state of play in West Oakland

Alexis (cc Amy & Doug)

Since our discussion on Tuesday about our response to Ken Alex/OPR, several other developments have surfaced that may affect the playing field around the same time our response is likely to go out:

- BAAQMD and Councilwoman Kaplan are convening a meeting on July 14 of the relevant agencies (BAAQMD, ARB, ACPH, EPA) to develop a workplan for “solutions” addressing the impacts of the Port and OAB. This appears to be a restart of the \$100M incentives initiative from last fall. I am working with Ben Machol’s office to prepare for that meeting.
- On July 13 CalEPA’s EJ/Enforcement initiative is hosting a West Oakland community meeting. While the scope of the initiative is the broad set of public health and safety issues in W.O., staff has expressed interest in dealing with the community’s Port/OAB issues. A call with CalEPA and CARB’s Deputy Executive EJ officer Veronica Eady has been tentatively set for next week.
- CalEPA’s new Assistant Secretary for EJ, replacing Arsenio Mataka, has just been announced as Yana Garcia. Yana was the lead attorney for EarthJustice on the West Oakland Title VI complaint filed in April against the City and Port.
- ECRCO advised yesterday re the T6 complaint that “ECRCO has been communicating and coordinating with DOT and DOJ directly on this...” and they “anticipate that there will be movement on this very soon...” I was told last week by DOT that they are basically ready to go out with an acceptance letter. ECRCO assures us we will see the acceptance letter before it is finalized.
- On Tuesday DHS provided an update on their efforts to ensure the upcoming renewal of the lease for the Customs station in West Oakland is well informed by the community’s involvement and concerns. DHS and I plan to talk in greater detail on this next week. I anticipate reluctance by the Customs station operators to relocating their operations.

Beyond that, I am meeting with WOEIP tomorrow morning and will be talking with BAAQMD and Cynthia/ARB today or tomorrow. Meanwhile I will continue developing a draft response to Ken Alex taking into account the changing state of play and whatever can be learned about the state’s interests and roles in West Oakland.

Richard

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 6/29/2017 12:11:33 AM
To: Olp, Kevin@EPA [Kevin.Olp@calepa.ca.gov]
Subject: Friday: Solutions for Reducing and Preventing Emissions at the Port of Oakland and Oakland Army Base Working Meeting

Kevin - it looks like I also have an option this Friday of being on a call in the 11-12 time slot. Apologies for the constraints. Richard

From: Olp, Kevin@EPA <Kevin.Olp@calepa.ca.gov>
Sent: Wednesday, June 28, 2017 2:41 PM
To: Grow, Richard
Cc: Reyes, Deldi; Connors, Rachel@ARB; Eady, Veronica@ARB
Subject: RE: Solutions for Reducing and Preventing Emissions at the Port of Oakland and Oakland Army Base Working Meeting

Thanks Richard! I'll caucus with my folks here and we'll propose a time in those parameters that works for us and schedule it shortly. Looking forward to you sharing your knowledge with us!

Kevin

From: Grow, Richard [mailto:Grow.Richard@epa.gov]
Sent: Wednesday, June 28, 2017 1:27 PM
To: Olp, Kevin@EPA <Kevin.Olp@calepa.ca.gov>
Cc: Reyes, Deldi <Reyes.Deldi@epa.gov>; Connors, Rachel@ARB <Rachel.Connors@arb.ca.gov>; Eady, Veronica@ARB <Veronica.Eady@arb.ca.gov>
Subject: RE: Solutions for Reducing and Preventing Emissions at the Port of Oakland and Oakland Army Base Working Meeting

Hi Kevin – This Friday is kind of jammed (busy in West Oakland) but I'm free next Weds 7/5 (any time other than 11-12), Thursday 7/6 (other than 10-11, 2-3) or Friday 7/7 anytime. Looking forward to talking, pls let me know if any of these times work. Tomorrow 6/29 also good any time other than 10-11.

Richard

From: Olp, Kevin@EPA [mailto:Kevin.Olp@calepa.ca.gov]
Sent: Wednesday, June 28, 2017 10:53 AM
To: Grow, Richard <Grow.Richard@epa.gov>
Cc: Reyes, Deldi <Reyes.Deldi@epa.gov>; Connors, Rachel@ARB <Rachel.Connors@arb.ca.gov>; Eady, Veronica@ARB <Veronica.Eady@arb.ca.gov>
Subject: RE: Solutions for Reducing and Preventing Emissions at the Port of Oakland and Oakland Army Base Working Meeting

Thanks for sharing Richard! I'd very much love to get your feedback on the larger issues here and I'll invite my colleagues Rachel and Veronica to join as well. Do you have time on Friday to chat, or is next week better for you? In advance of our conversation just wanted to say thanks for your help!

Kevin

From: Grow, Richard [mailto:Grow.Richard@epa.gov]
Sent: Wednesday, June 28, 2017 10:19 AM
To: Olp, Kevin@EPA <Kevin.Olp@calepa.ca.gov>
Cc: Reyes, Deldi <Reyes.Deldi@epa.gov>
Subject: FYI: Solutions for Reducing and Preventing Emissions at the Port of Oakland and Oakland Army Base Working Meeting

Kevin – this just came in.

Richard Grow
US EPA
Region 9
(415) 947-4104

From: Aloha Galimba [mailto:agalimba@baaqmd.gov]
Sent: Wednesday, June 28, 2017 8:48 AM
To: abockelman@mtc.ca.gov; Grow, Richard <Grow.Richard@epa.gov>; cynthia.marvin@arb.ca.gov; Karen Schkolnick <kscholnick@baaqmd.gov>; muntu.davis@acgov.org; anna.lee@acgov.org
Cc: Sheng Thao <sthao@oaklandnet.com>
Subject: Solutions for Reducing and Preventing Emissions at the Port of Oakland and Oakland Army Base Working Meeting

Hello,

The Bay Area Air Quality Management District is inviting you – or a representative from your organization - to attend a working meeting on solutions for reducing emissions and health impacts in the West Oakland Community from current operations at the Port of Oakland and future operations at the former Oakland Army Base.

This meeting will be hosted by Oakland Council Member at Large, Rebecca Kaplan, at the Alameda County Transportation Commission, which is located at 11th and Broadway in Downtown Oakland on **Friday July 14, 2017 between 12 pm – 2 pm.**

The goal of this meeting is to devise a workplan that harnesses and coordinates the resources of the participating entities.

Please confirm your participation with me with a CC to Ms. Kaplan' assistant Sheng Thao at Sthao@oaklandnet.com. If you have any questions or concerns, please feel free to reach out to me directly.

Thank you and have a great rest of the day!

Regards,

Aloha de Guzman
Executive Secretary

Bay Area Air Quality Management District
Executive Office
375 Beale Street, Suite 600 | San Francisco, CA 94105
Office: 415.749.4782 | Cell: 415.745.5633
agalimba@baaqmd.gov | www.baaqmd.gov

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 6/28/2017 8:26:48 PM
To: Olp, Kevin@EPA [Kevin.Olp@calepa.ca.gov]
CC: Reyes, Deldi [Reyes.Deldi@epa.gov]; Connors, Rachel@ARB [Rachel.Connors@arb.ca.gov]; Eady, Veronica@ARB [Veronica.Eady@arb.ca.gov]
Subject: RE: Solutions for Reducing and Preventing Emissions at the Port of Oakland and Oakland Army Base Working Meeting

Hi Kevin – This Friday is kind of jammed (busy in West Oakland) but I'm free next Weds 7/5 (any time other than 11-12), Thursday 7/6 (other than 10-11, 2-3) or Friday 7/7 anytime. Looking forward to talking, pls let me know if any of these times work. Tomorrow 6/29 also good any time other than 10-11.

Richard

From: Olp, Kevin@EPA [mailto:Kevin.Olp@calepa.ca.gov]
Sent: Wednesday, June 28, 2017 10:53 AM
To: Grow, Richard <Grow.Richard@epa.gov>
Cc: Reyes, Deldi <Reyes.Deldi@epa.gov>; Connors, Rachel@ARB <Rachel.Connors@arb.ca.gov>; Eady, Veronica@ARB <Veronica.Eady@arb.ca.gov>
Subject: RE: Solutions for Reducing and Preventing Emissions at the Port of Oakland and Oakland Army Base Working Meeting

Thanks for sharing Richard! I'd very much love to get your feedback on the larger issues here and I'll invite my colleagues Rachel and Veronica to join as well. Do you have time on Friday to chat, or is next week better for you? In advance of our conversation just wanted to say thanks for your help!

Kevin

From: Grow, Richard [mailto:Grow.Richard@epa.gov]
Sent: Wednesday, June 28, 2017 10:19 AM
To: Olp, Kevin@EPA <Kevin.Olp@calepa.ca.gov>
Cc: Reyes, Deldi <Reyes.Deldi@epa.gov>
Subject: FYI: Solutions for Reducing and Preventing Emissions at the Port of Oakland and Oakland Army Base Working Meeting

Kevin – this just came in.

Richard Grow
US EPA
Region 9
(415) 947-4104

From: Aloha Galimba [mailto:agalimba@baaqmd.gov]
Sent: Wednesday, June 28, 2017 8:48 AM
To: abockelman@mtc.ca.gov; Grow, Richard <Grow.Richard@epa.gov>; cynthia.marvin@arb.ca.gov; Karen Schkolnick <kscholnick@baaqmd.gov>; muntu.davis@acgov.org; anna.lee@acgov.org
Cc: Sheng Thao <sthao@oaklandnet.com>
Subject: Solutions for Reducing and Preventing Emissions at the Port of Oakland and Oakland Army Base Working Meeting

Hello,

The Bay Area Air Quality Management District is inviting you – or a representative from your organization - to attend a working meeting on solutions for reducing emissions and health impacts in the West Oakland Community from current operations at the Port of Oakland and future operations at the former Oakland Army Base.

This meeting will be hosted by Oakland Council Member at Large, Rebecca Kaplan, at the Alameda County Transportation Commission, which is located at 11th and Broadway in Downtown Oakland on **Friday July 14, 2017 between 12 pm – 2 pm.**

The goal of this meeting is to devise a workplan that harnesses and coordinates the resources of the participating entities.

Please confirm your participation with me with a CC to Ms. Kaplan' assistant Sheng Thao at Sthao@oaklandnet.com. If you have any questions or concerns, please feel free to reach out to me directly.

Thank you and have a great rest of the day!

Regards,

Aloha de Guzman
Executive Secretary

Bay Area Air Quality Management District
Executive Office
375 Beale Street, Suite 600 | San Francisco, CA 94105
Office: 415.749.4782 | Cell: 415.745.5633
agalimba@baaqmd.gov | www.baaqmd.gov

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 6/28/2017 7:13:18 PM
To: David Vintze [DVintze@baaqmd.gov]
Subject: FW: Solutions for Reducing and Preventing Emissions at the Port of Oakland and Oakland Army Base Working Meeting

FYI

From: Aloha Galimba [mailto:agalimba@baaqmd.gov]
Sent: Wednesday, June 28, 2017 8:48 AM
To: abockelman@mtc.ca.gov; Grow, Richard <Grow.Richard@epa.gov>; cynthia.marvin@arb.ca.gov; Karen Schkolnick <kscholnick@baaqmd.gov>; muntu.davis@acgov.org; anna.lee@acgov.org
Cc: Sheng Thao <sthao@oaklandnet.com>
Subject: Solutions for Reducing and Preventing Emissions at the Port of Oakland and Oakland Army Base Working Meeting

Hello,

The Bay Area Air Quality Management District is inviting you – or a representative from your organization - to attend a working meeting on solutions for reducing emissions and health impacts in the West Oakland Community from current operations at the Port of Oakland and future operations at the former Oakland Army Base.

This meeting will be hosted by Oakland Council Member at Large, Rebecca Kaplan, at the Alameda County Transportation Commission, which is located at 11th and Broadway in Downtown Oakland on **Friday July 14, 2017 between 12 pm – 2 pm.**

The goal of this meeting is to devise a workplan that harnesses and coordinates the resources of the participating entities.

Please confirm your participation with me with a CC to Ms. Kaplan' assistant Sheng Thao at sthao@oaklandnet.com. If you have any questions or concerns, please feel free to reach out to me directly.

Thank you and have a great rest of the day!

Regards,

Aloha de Guzman
Executive Secretary

Bay Area Air Quality Management District
Executive Office
375 Beale Street, Suite 600 | San Francisco, CA 94105
Office: 415.749.4782 | Cell: 415.745.5633
agalimba@baaqmd.gov | www.baaqmd.gov

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 5/3/2017 4:55:45 PM
To: Blazej, Nova [Blazej.Nova@epa.gov]
Subject: west oak cmts

Nova – got your voice mail, totally slammed today but think about these, expand, revise, whatever, and the fact is Alexis knows the situation better than almost anyone in the building and will revise the remarks herself to suit the occasion. Meanwhile, something like...

We have been working with communities in Oakland for quite some time, for instance in West Oakland steadily for the past 20 years [Nova – referring to SFund since 97, our EJ pilot headed up by Carla Moore in 97/98] Most recently we have been working with the community members in West Oakland, the City and Port as well as our sister state and local agencies to address environmental concerns around the Port of Oakland and the Oakland Army Base. [Nova – Earthjustice filed a T6 complaint on this last month, Alexis knows all but I doubt if this belongs in the remarks.]

...ring me up[on cell at Personal Matters / Ex. 6 want, I'll pick up if I can.

Richard

Message

From: Grow, Richard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F9BE7A2DDE6B42FB832CA9B138892F27-RGROW]
Sent: 5/3/2017 2:51:40 PM
To: Adams, Elizabeth [Adams.Elizabeth@epa.gov]; Matthew Lakin [Lakin.Matthew@epa.gov]
CC: Strauss, Alexis [Strauss.Alexis@epa.gov]; Jordan, Deborah [Jordan.Deborah@epa.gov]; Machol, Ben [Machol.Ben@epa.gov]; Zimpfer, Amy [Zimpfer.Amy@epa.gov]; BANDROWSKI, MIKE [Bandrowski.Mike@epa.gov]; Reyes, Deldi [Reyes.Deldi@epa.gov]; Miller, Amy [Miller.Amy@epa.gov]
Subject: Draft OAB mitigation plans and meeting
Attachments: Outline Meetings w AQ public agencies May 2017.docx; Construction AQ Plan Central and SE Gateway 5-01-2017.pdf; Mitigation Measure Implementation re AQ Plans.docx

Elizabeth & Matt (cc others)

Below and attached are the latest from the City regarding air quality mitigation plans for the next phase of OAB development, as well as a reminder that on May 9 the City will host the first of three meetings with agencies to preview and discuss these plans. Per my note last week to Alexis, Deborah and yourselves (4/24 8:00 am), my recommendation is that we not show an air programmatic presence, at least at this first meeting, until CARB, BAAQMD and ACPH – who will be attending - have been able to test the waters to see if this process is significantly different from the past and is in fact substantive. In the meantime I am coordinating closely with staff from those three agencies, and plan to attend basically in a role of liaison and observation in the context of EJ and Title VI concerns that have been raised.

Richard

From: McGowan, Patricia [mailto:PMcGowan@oaklandnet.com]
Sent: Monday, May 01, 2017 5:04 PM
To: David Vintze <dvintze@baaqmd.gov>; Elizabeth Yura (elizabeth.yura@arb.ca.gov) <elizabeth.yura@arb.ca.gov>; Anna Lee (anna.lee@acgov.org) <anna.lee@acgov.org>; Grow, Richard <Grow.Richard@epa.gov>; Robbie Morris (robbie.morris@arb.ca.gov) <robbie.morris@arb.ca.gov>
Cc: Ranelletti, Darin <DRanelletti@oaklandnet.com>; Cappio, Claudia <CCappio@oaklandnet.com>; Monetta, John <JMonetta@oaklandnet.com>; Cole, Doug <DCole@oaklandnet.com>; Pat Cashman <ptrckcshmn@gmail.com>
Subject: Admin. Draft: Construction AQ Plan for Prologis sites at former Oakland Army Base

Hello All,

Attached please find the administrative draft Construction-phase Air Quality Plan for the Central and Southeast Gateway sites at the former Oakland Army Base. Comments received from your agencies and from the public on previous constructed-related air quality plans for the OAB have been used by the applicant in developing this plan.

Please review the attached draft Plan for discussion at our upcoming meeting of May 9, 2017 (the meeting time, date and location were previously noticed to you via e-mail and a outlook meeting request.) Official written comments from your agency are NOT needed at this meeting; this is intended to be a staff-to-staff meeting to review this plan, prior to the Stakeholder review process outlined in the SCA/MMRP.

In addition, attached please find an overview of the three scheduled meetings (previously announced via e-mail and outlook meeting requests) as well as a list of which mitigation measures are addressed with which plan.

I look forward to seeing you on May 9 to review this plan.

Pat

Patricia McGowan, Environmental Coordinator | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa, Suite 3315 | Oakland, CA 94612 | Phone: (510) 238-3588 | Fax: (510) 238-6538 | Email: PMcGowan@oaklandnet.com | Website: www.oaklandnet.com/planning

Oakland Army Base Redevelopment Project: City of Oakland Gateway Development Sites

Mitigation Measures connected to specific Air Quality Plans

May 1, 2017

Air Quality Plan Components for the Prologis Development Sites

The list below identifies which air quality-related requirements from the Oakland Army Base (OAB) Standard Conditions of Approval / Mitigation Monitoring and Reporting Program ("SCA/MMRP") are anticipated to be addressed in the Construction-Phase Air Quality Plan and the Operational-Phase Air Quality Plan.

Construction-Phase Air Quality Plan:

- Construction Management Plan (SCA AIR-1)
- Construction-Related Air Pollution Controls (SCA AIR-2)

Operational-Phase Air Quality Plan:

- Truck Diesel Emission Reduction Plan (Mitigation 4.4-4) (This mitigation measure is also implemented by other Plans, including the Port's Maritime Air Quality Improvement Plan, MAQIP, 2009)
- Transportation Control Measures (Mitigation 4.4-5) (This mitigation measure will also require coordination with other buildings at the OAB)
- Energy-Conserving Fixtures and Designs (Mitigation 4.4-6) (This mitigation measure is also implemented through building permit review.)
- Demonstration Projects for Emissions Reductions (Mitigation 5.4-1) (This mitigation measure will require coordination with funding sources.)
- Parking and Transportation Demand Management (SCA TRANS-1) (This mitigation measure will also require coordination with other buildings at the OAB)

Area-Wide Mitigation Measures

The list below identifies which requirements from the Oakland Army Base Standard Conditions of Approval / Mitigation Monitoring and Reporting Program ("SCA/MMRP") are anticipated to be addressed through other plans which relate area-wide instead of to specific buildings:

- Truck Management Plan (Mitigation 4.3-7)
- Truck Diesel Emission Reduction Plan (Mitigation 4.4-4) (Includes the Port's Maritime Air Quality Improvement Plan, MAQIP, 2009)
- Transportation Control Measures (Mitigation 4.4-5) (This mitigation measure will also require coordination with other buildings at the OAB)
- Parking and Transportation Demand Management (SCA TRANS-1)

Mitigation Measures implemented with the building permit

- Construction Traffic and Parking (SCA TRANS-2)
- SCA Noise 1,2,3,4,5,6
- Traffic Control Plan – Hazardous Materials (Mitigation 4.3-13)

Mitigation Measure(s) for a specific site

- West Gateway Rail and Maritime Emissions Reduction Plan (Mitigation 4.4-3b, is specific to the ground lessee of the West Gateway and rail that serves the West Gateway)